IN THE

Supreme Court of Appeals,

OF

WEST VIRGINIA.

STATE OF WEST VIRGINIA, *Plaintiff Below, Appellee.*

vs.

HENRY C. KING, *Defendant Below, Appellant, and others, Defendants Below, Appellees.*

Petition of Henry C. King for appeal and supersedeas.

To the Honorable Judges of said Supreme Court of Appeals of West Virginia:

Now comes your petitioner, Henry C. King, one of the defendants in a certain chancery case in the circuit court of West Virginia for the county of Marion, entitled State of West Virvinia vs. Henry C. King et al., and feeling himself to be aggrieved by certain decrees and procedings in said case, presents unto Your Honors a transcript of the record of said cause and respectfully shows unto Your Honors:

That on the first Monday of July, 1893, the State of West Virginia filed a bill in chancery in the circuit court of Logan county against John V. LeMoyne, your petitioner's immediate grantor, and sundry others for the purpose of subjecting to sale for the benefit of the school fund parts of the tract of land known as the Robert Morris 500,000 acre grant, patented to Robert Morris by the Commonwealth of Virginia, June 23rd, 1795, upon the claim that said grant had been forfeited to said State by its Constitution, by reason of noncharging of said grant with State taxes thereon for the five successive years after 1869, to-wit, for the year 1884 and the years immediately following. Said bill traced the title to said grant down to said Lemoyne, and alleged that the

same was redeemed by Robert E. Randall, trustee of the Swan estate, the predecessors of said LeMoyne, in a certain proceeding in the circuit court of Wyoming county on the 10th day of April, 1883, since which time said grant has not been entered upon the land books for taxation.

That your petitioner, who had succeeded to all the rights of said Randall and LeMoyne, made known to the counsel for the State his purpose to pay the taxes chargeable upon said land and redeem the same, including portions thereof which had been illegally sold and was then claimed by various others; whereupon on the 9th day of January, 1894, said attorney caused said suit to be dismissed, but without prejudice to the right of the State to bring a new suit.

That after the dismissal of said suit the State, by other counsel, on the 7th day of May, 1894, instituted another suit in chancery in the circuit court of Wyoming county against your petitioner and others for the same purpose as that which had been dismissed, alleging that the said grant had been redeemed by said Randall from all taxes and forfeitures up to and including the year 1883. Subsequently four successive amended bills were filed making additional parties, and when said cause was in condition to be answered your petitioner, on the 25th day of June, 1896, filed his answer thereto, in which he claimed to be the owner of said grant by title regularly derived from and under said patent, which title he set out and exhibited to the court, denied that the said title was forfeited, and denied the validity of the State constitution and statutes under which the forfeiture was claimed, but offered, nevertheless, to pay any unpaid takes chargeable upon said land and to redeem said land, and stated what were the proper boundaries of said grant; to which answer the State replied generally. Thereafter said cause was referred to a commissioner in chancery, and such other proceedings were had in said cause that on the 30th day of September, 1897, the same came on to be heard, and your petitioner having paid to the commissioner of school lands of said county the sum of $3090.08, the amount of taxes reported by the commissioner as chargeable in redemption of said land, together with the interest thereon and the cost of suit a decree was entered wherein it was found that there had

been due and proper service of process upon all the defendants and all persons interested in said cause, that said sum of $3090.08 was the total amount of taxes, interest and costs chargeable in redemption of so much of said grant as was situated in the State of West Virginia, and adjudged and decreed that your petitioner had the right, superior to all others, to redeem said land so far as the title thereto was vested in said State, that the other defendants had no right or title to said land or interest therein, that the said grant was correctly bounded ad described in accordance with certain monuments, abuttals and metes and bounds set forth in said decree, and shown and delineated on a map filed in said cause and referred to in the said decree, and that said land was by your petitioner fully redeemed from all forfeiture, and that no sale thereof be made.

That after the institution of said suit, and before your petitioner filed his answer therein, sundry of the appellees herein and those under whom they claimed, and their counsel, appeared in said court and presented to the court the record of said cause of State of West Virginia vs. LeMoyne et al., which had been reinstated after the bringing of said suit in Wyoming county, and the records of several similar causes brought for the purpose of selling other large grants which overlap upon said Morris grant, and endeavored to procure a dismissal of said cause, in order to throw the proceedings against your petitioner and said land into the circuit court of Logan county and under the control of their counsel who appeared as counsel for the State in that court; but the said circuit court of Wyoming county refused to dismiss said cause, but retained the same for hearing. Afterwards Alexander McClintock filed a petition in said cause, exhibiting therewith the records of said several suits, to one of more of which he was a party.

That within the five years after the redemption of said Morris grant, and before any forfeiture thereof had occurred or could occur, the commissioner of school lands for Logan county had prosecuted numerous ex parte proceedings in the circuit court of that county, to sell specified parcels of land as waste and unappropriated land, but which were in fact part and parcel of said Morris grant to which the State had no claim, and over which the com-

missioner of school lands had no control, and which the court had no jurisdiction to sell, and a large number of such parcels, aggregating probably 150,000 acres or more, were "sold" by the said commissioner of school land and deeds therefor issued; a specimen of which deeds and of the proceedings leading up to same appear at pages 211 to 216 of the printed transcript of part of the record of said cause of State of West Virginia vs. Henry C. King et als. brought up upon appeal of this petitioner from decrees announced therein on the 15th day of July, 1905, and now pending in this court. The claimants of said land and other lands within the said grant manifesting a purpose to direct the proceedings in said cause in the circuit court of Wyoming county without disclosing their identity or interest upon the record, your petitioner in his answer in said cause, in order that the court might be advised in said premises, set forth the names and claims of such persons as far as he was informed (page 198 et seq. of record upon appeal by the State.)

That after the entry of said decree of September 30, 1897, the counsel for the present appellees herein other than the State, and subsequently designated as "contesting defendants," and who were claimants to said land, adversely to the State as well as to your petitioner, procured and paid for a transcript of the record of said cause from the circuit court of Wyoming county, and, in conjunction with the Attorney General, prepared and presented to Your Honors a petition in the name of the State for an appeal from said decree of Sept. 30, 1897, engaging to become answerable for the costs of appeal, and on the 18th day of October, 1898, an appeal was allowed, which was subsequently heard and determined by this court, being argued by sundry counsel who represented the said adverse claimants, who, however, appeared as counsel for the State, to whose interests the claims of title represented by them were and are hostile and adverse.

That one of the issues raised by the pleadings and determined by the decree in said circuit court was the proper location and boundaries of said Morris grant; and the said decree of said circuit court was alleged in said petition for appeal to be erroneous because the redemption thereby allowed was "not according to the patent, but according to the metes and bounds laid down by

the witness Sell of the 500,000 acre tract of land;" meaning thereby the metes, bounds and location fixed by said decree.

That upon the decision of said appeal, it appearing that an erroneous method had been adopted by the chancery commissioner in determining the amount of taxes chargeable upon said grant, said decree was reversed so far as it fixed the amount of taxes, interest and costs and declared a redemption by the payment of such amount, and was confirmed in all other respects, and said cause was remanded to the court of Wyoming county, with directions to said court to permit your petitioner to file an amended petition, particularly defining and accurately locating the portions of said grant which your petitioner wished to redeem (it being made known to the court that there were many parts of said grant to which your petitioner would assert no claim) and to be further proceeded in according to law.

That after said cause was remanded it was removed to the circuit court for Logan county, and while pending there counsel for the persons who had procured and prosecuted said appeal in the name of the State, prepared an amended bill, called the 5th Amended Bill, and on the 27th day of July, 1900, without any request on the part of the State, procured said bill to be filed. Said bill purports to make the persons who had been mentioned in this petitioner's answer as adverse claimants, and in whose interest said appeal had been prosecuted, defendants to said suit, though no relief was asked or cause of complainaint shown against them. Your petitioner objected to the filing of said amended bill, but said objection was overruled.

That on the 22nd day of February, 1901, said cause was removed to the circuit court for Cabell county, and on the 22nd day of March, 1901, your petitioner filed his amended petition, defining and locating the portions of said grant which he wished to redeem, and excluding and relinquishing about 500 junior patents and small tracts which he did not wish to claim.

That on the 1st and 5th days of July, 1901, sundry pleadings were filed by the contesting defendants, designated by them as answers to the original and five amended bills of the State, and on the said 5th day of July, your petitioner moved the court to strike out said amended bill and the so-called answers thereto, and

also moved the court to enter a decree referring said cause to a commissioner for the sole purpose of ascertaining and reporting the amount of taxes, interest and cost chargeable upon the land described in your petitioner's amended petition, both which motions were by the court overruled. Thereupon the court entered a decree of reference against the objection of your petitioner, committing said cause to John T. Graham, Esq., a commissioner in chancery of said court, with direction to inquire into and report upon all the matters that had previously been referred to and reported upon by the commissioners in chancery for the circuit court of Wyoming county, and all the matters passed upon and settled by the decree of that court and the affirmance thereof by this Honorable Court. One of said requirements, inserted upon "the motion of the defendants, other than Henry C. King answering at this term and others that may hereafter appear herein," directed said commissioner "to inquire, ascertain and report the true and correct location of the said Morris grant." Thereafter sundry like so-called answers were filed by the contesting defendants.

That all the said so-called answers, except that of certain infants who answered by their guardian ad litem, pretended to raise issues with the State in reply to the bill which they had procured to be filed and which contained nothing that required an answer, but were in reality in the nature of original bills against your petitioner, protesting against his title and right of redemption, claiming portions of the land claimed by him, denying that the boundaries of the 500,000 acre grant were as fixed by the decree of the circuit court of Wyoming county, claiming that the title of your petitioner's grantor had been transferred to them by sec. 3 of article 13 of the Constitution, and praying that their title be quieted. They were independent bills improperly entitled in said cause and improperly injected into the same; and your petitioner treating said so-called answers as suits against him filed answers thereto, in which, among other things, he set out the facts concerning the entry of said Morris grant on the land books and the charging of taxes thereon, showing that said grant was on the land books when the Constitution was adopted and for several years thereafter, and was not liable to forfeiture and was not forfeited under said Con-

stitution; claimed that it was the fault of the State officers that said grant was not entered or taxed after the year 1883; denied that the title to said land had been transferred to or vested in said claimants; claimed that the provisions of the Constitution and statutes under which the said parties contended that the title to said Morris grant had been transferred to them or had been forfeited were not applicable to said grant or to their claim of title, and that, if applicable, all said provisions which attempt irredeemably to forfeit land for the non-assessment of taxes, or to transfer to any other person the title to such land, are in contravention of Sec. 1, of Art. 14, of the Amendments to the Constitution of the nited States, and denied that said claimants had any valid title to said land.

That said commissioner under said decree of reference first entered upon and prosecuted his enquiries into the proper location of said 500,000 acre grant, and after making an inspection of the premises and taking a large amount of oral and documentary evidence completed and filed his report on the 21st day of March, 1903, upon the question of the location of said grant, in which he found, among other things, that no corner trees which were called for in said grant and the alleged survey thereof; except at the ends of the first line, had ever existed; that some of the creeks now known by the names mentioned in the grant had acquired those names long after the grant was issued; that some of the creeks mentioned did not exist anywhere in that country; that only the first line of said grant had been actually surveyed upon the ground, having been run as a line of an elder tract for which the patent called, and that the other lines had been projected without any surveying, and without the surveyor having been upon the ground, and with a wildly mistaken notion as to the geography of the country. The commissioner, therefore, in determining the location of the grant discarded those calls in the survey and the grant that he found to be fictitious or of uncertain identity, or mentioned through ignorance or mistaken as to their locality, and adopted the patents calls for course and distance in locating the said surveyed line. He found and reported the location of the 1st, 2nd, 3rd, and 6th, or last, line the same as they are located

by the circuit court of Wyoming county and by this Honorable Court, but shortened somewhat the fourth line in order to preserve the course of the fifth line, the effece of which was to exclude from said grant as located by the courts, about 30,000 acres in an acute triangle at the northern end of the tract, but preserving substantially the form of the original plat.

That your petitioner excepted to the said report to the extent that it departed from the boundaries set out in said decree of said court of Wyoming county, and joint exceptions thereto were filed by 56 of the contesting defendants out of about 400 mentioned in the 5th amended bill. Of those so excepting 25 or more had never filed any pleadings in the case, and some were dead at the time.

That afterwards the said circuit court of Cabell county was prohibited from hearing said cause, and the same was removed to the circuit court for Marion county, and there docketed on the 8th day of February, 1904.

That on the June, 1904, term of said court sundry motions were made to dismiss said suit as to certain lands under the provisions of Sec. 6 of Chap. 105 of the Code, upon the ground that they were held under Section 3 of Article 13 of the Constitution, and said suit was dismissed as to the lands involved in certain motions of Egbert Mills and Spruce Coal & Lumber Company, by decrees entered July 15, 1905, from which decrees your petitioner appealed and appeal is now pending herein. The other motions were abandoned.

That after the argument of said two motions and before the decision thereof the contesting defendants, becoming alarmed less Sec. 3, of Art. 13 of the Constitution be held not to apply to the land claimed by them, or be held to be in conflict with the 14th Amendment of the Constitution of the United States, procured the legislature of West Virginia, at the 1905 session, to amend Sec. 6, Chap. 105 of the Code, so as to deprive your petitioner of his right to redeem any land embraced in another patent or deed from the commissioner of school land, "purporting" to convey such lands, unless within 30 days after the filing of such patent

or deed your petitioner should allege and prove by the certificate of the Auditor that since the date of such patent or purported deed the same had become forfeited for "non-payment of taxes."

That on the 1st day of June, 1905, term, immediately following the passage of said act, which took effect about that day, the contesting defendants filed patents and deeds from the commissioner of schools lands of Logan county for about 100 separate tracts of lands, which number was increased to about 150 or more in the first five days of the term, and continued throughout the term to be increased by filing of other deeds and patents, the filing of all which was followed 30 days thereafter by motions to dismiss the suit and all proceedings, so far as they affected the said lands; and afterwards the decrees hereinafter mentioned and complained of were entered. All said lands were parts of said Morris grant described in your petitioner's amended petition, filed in pursuance of the mandate of this Honorable Court, and said motions were resisted by your petitioner upon the ground that said Sec. 6 of Chap. 105 of the Code, as amended, did not apply to said case, and if applied to it, was in contravention of the Constitution of West Virginia, and the Constitution of the United States, particularly Art. 1, Sec. 1, and Sec. 1 of the 14th Amendment.

That said cause, after being heard upon sundry of said motions to dismiss, was also heard upon said commissioner's report upon the location of the Morris grant, and the exceptions thereto, and on the 6th day of December, 1905, said court entered a decree reversing said report, except as to the location of the first line of said grant, and purporting to fix and establish a location and boundaries of said grant that depart in every line, except the first one, from the location affirmed by this Honorable Court, and which embraced a total area of less than 90,000 acres.

That after the entry of said decree of Dec. 6, 1905, purporting "to define the boundaries and abuttals of said 500,000 acre grant" the following decrees were entered:

Dec. 7, 1905, decree dismissing the original and several amended bills and said suit as to land claimed by Egbert Mills and others, his associates, under Sec. 6, of Chap. 105 of the Code, as amended

in 1905; and as being outside the Morris grant as located by said decree of Dec. 6, 1905;

Decree dismissing said suit on motion of William J. Canady, under Sec. 6, of Chap. 105 of the Code as amended, and as being outside the Morris grant as located by said court;

Decree dismissing said suit on motion of Alexander Stafford and Loventia Stafford as to certain lands under Sec. 6, of Chap. 105 of the Code as amended;

Decree dismissing said suit on motion of Robert White and others as to a certain tract of land, as being outside the boundaries of said Morris grant as fixed by said court;

Decree dismissing said court on motion of Joseph W. and George Hinchman as to certain lands as being outside the boundaries of said Morris grant as fixed by said court;

Decree dismissing said suit on motion of Richard Torpin and others, trustees, as to certain land, as being outside the boundaries of said Morris grant as fixed by said court;

Decree dismissing said suit on motion of W. A. Johnson as to certain lands under section 6 of chapter 105 of the Code as amended, and as being outside of the boundaries of said Morris grant as fixed by said court;

Decree dismissing said suit on moton of A. H. Toler and others under section 6 of Chapter 105 of the Code as amended, and as being outside of said Morris grant as fixed by said court;

Decree dismissing said suit on motion of James Hatfield as to certain lands under Sec. 6, of Chapter 105 of the Code as amended, and as being outside the boundaries of said Morris grant as fixed by said court;

Decree dismissing said suit on motion of Bruce McDonald and others as to certain lands under Sec. 6 of Chap. 105, of the Code as amended, and as to other lands as being outside the boundaries of said Morris grant as fixed by said court;

Decree dismissing said suit on motion of Turkey Land Company as to certain lands under Sec. of Chap. 105 of the Code as amended;

Decree dismissing said suit as to sundry parcels of land as

outside the boundaries of said Morris grant as fixed by said court: claimants or moving parties not shown;

December 8, 1905, decree dismissing said suit on motion of Alexander Varney as to certain lands under Sec. 6, Chap. 105 of the Code as amended, and as being outside the boundaries of said grant as fixed by said court;

Decree dismissing said suit on motion of Charles L. Tracey as to certain lands as being outside the boundaries of said Morris grant as fixed by said court;

Decree dismissing said suit on motion of Alexander Trent as to certain lands, under Sec. 6, Chap. 105 of the Code as amended;

Decree dismissing said suit on motion of Elijah Ferrell as to certain lands, under Sec. 6, Chap. 105 of the Code as amended, and as being outside the boundaries of said Morris grant as fixed by said court;

March 6th, 1907, decree dismissing said suit and petition of your petitioner, on motion of the heirs of Paren Christian, Under Sec. 6, Chap. 105 of the Code as amended;

Decree dismissing said suit and petition of your petitioner, on motion of Milton G. Browning and others, under Sec. 6, Chap. 105 of the Code as amended;

That all said tracts of land as to which said suit or your petitioner's said petition was dismissed are within the boundaries of said Morris grant, and are part and parcel thereof, as said grant is located by the adjudication of this Honorable Court, and are included in your petitioner's amended petition in said suit; and many of said tracts are part of said grant, as the said circuit court for Marion county attempted to locate the same. Many of said motions upon which said decrees were entered were made by persons who had filed no pleadings, and the record does not disclose whether they or any one claim said lands.

Your petitioner presents herewith a transcript of the record of said cause upon the appeal heretofore taken in the name of the State, the transcript of the record upon the pending ap-

peals from said decrees of July 15, 1905, and a transcript of so much of the rest of the record of said cause as is deemed material to a review of the decrees and proceedings sought to be reviewed herein, from which the matters herein set forth will more fully appear.

ASSIGNMENT OF ERRORS.

Your petitioner is advised and doth aver that the proceedings, rulings, decisions and decrees of the circuit court were and are erroneous and against the just rights of your petitioner in the following respects:

1. The said circuit court erred in assuming and undertaking to reverse the circuit court for Wyoming county and this Honorable Court, and to "define the boundaries and abuttals" of said Morris grant by lines totally variant from those which had been declared and decreed by this Honorable Court to form the proper boundaries of said grant.

2. It was erroneous for said circuit court to undertake to impair or alter the effect of the adjudication in said decree of 1897, and the affirmance thereof, as between your petitioner and the State and others who were parties by name upon the record of said cause, by making new and different boundaries for said tract, and annulling four-fifths of the grant.

3. It was erroneous for said circuit court to disregard and undertake to annul said former adjudication, as between your petitioner or the state and the "contesting defendants," who procured and prosecuted said appeal from said decree of 1897, for their own advantage, and who were concluded by the affirmance of said decree.

4. The said circuit court erred in attempting to make any adjudication upon the said question of boundary as between the State or your petitioner and persons who had filed no pleadings and raised no issue in said cause and who were not connected with said grant.

5. The circuit court erred in sustaining the exceptions of the "contesting defendants" and in reversing the findings and report

of the commissioner as to everything but the location of the first line of said grant. Many of the findings of the commissioner upon questions of fact, which findings were set aside, were sustained by all the evidence and opposed by none; all his findings of fact were sustained and compelled by the overwhelming preponderance of the evidence. The location given by him of four of the six lines of the grant, and part of another, were not only in accordance with the decree of this Honorable Court, but were in accord with the abstract law and the great weight of the evidence.

6. The said circuit court adopted an erroneous location of said grant. The location of said grant, established by said decree of September 30, 1897, and the affirmance thereof, was not only justified by the evidence and the record when the decree was entered, but was imperatively demanded by the evidence afterwards produced, and by the law applicable to the case; and that which the circuit court of Marion county attempted to establish by its decree of December 6, 1905, was unwarranted by the evidence, or by any law. It was error to terminate the second line of the grant at Q. 2 on the "Stone map," about 5 miles short of the patent call, the corner trees called for not being found there or proven ever to have stood there and the evidence showing that they never existed, but were fictitious, and that the line had never been run as an original line of the tract. The line should have been given its full length as in the decree of 1897. It was error to locate the 3rd line from Q 2 to ZZ on the map instead of from H to I, departing 39 degrees and 5 miles from the patent call. The line so located does not cross Pigeon creek, which is called for in the grant, the evidence shows that what are now known as Turkey creek and Gilbert creek were not known by those names until long after the grant was issued, and no corner trees were found or shown ever to have stood at ZZ, but the evidence shows that none ever existed, and that no lines was ever originally run to that place. It was error arbitrarily to locate the north east corner of said grant 16 miles from where the entry and survey of the elder adjacent grant, of which it is a corner, put it, and only 5 1-2 miles

instead of 21 1-2 miles from the beginning corner. The other lines of said grant were placed by said court many miles from their proper location.

7. The said court erred in entering each and every or any of the aforementioned decrees dismissing your petitioner's petition in said cause, or dismissing all said proceedings, or dismissing said suit, to the extent that such dismissal of said suit dismissed your petitioner's said petition, so far as said decrees were based upon the ground that the lands to which they related were outside the boundaries of the Morris grant, as located by said court. The court had no lawful authority to make such location of said grant, and the location made by said court was itself intrinsically erroneous. Said lands are within the true and proper boundary of said grant, and are part and parcel thereof.

8. The said circuit court erred in entering each and every or any of the decrees aforementioned, so far as such dismissals were based on Sec. 6 of Chap. 105 of the Code, as amended by the Act passed February 23, 1905. Said section, as amended, is not applicable to said cause. Said cause had ceased to be a suit to sell any land, or any suit on the part of the State, at the time said act was passed, and had become, by reason of this petitioner's adjudicated right of redemption and his offer to pay the taxes upon all said land as to which said proceedings were dismissed, simply a proceeding to determine the amount of taxes chargeable upon said land and payable by your petitioner, and no sale was contemplated or being attempted. The only suit in the case was that instituted by the "contesting defendants" against your petitioner. As applied to said cause the said Act passed February 23, 1905, amending sections 6 and 19 of Chapter 105 of the Code attempts to deny to a defendant the right to make defense or to be heard in a court to which he has been duly summoned; it makes an unreasonable statute of limitations; it attempts to reverse a judicial decree; it abrogates an accepted and partly completed proposition and contract between the State and a private person; it undertakes to make a direct transfer of private property, or extinguish

vested rights in private property; it attempts to deprive persons of property without due process of law; it compels a dismissal of suit as to lands which the State Constitution requires to be sold in such suits; in which and other particulars it contravenes the Constitution of West Virginia, to-wit; sections 5 and 10 of article III; article V; section 4 of article XIII; and the Constitution of the United States to-wit: Section XI, of article I, and section I of article Fourteen of the Amendments thereto.

9. It was erroneous for said circuit court to enter any decree or take any action, on the motion of the contesting defendants, upon any theory that said Morris grant was forfeited or liable, as to them, to be treated as forfeited. Said grant had been entered upon the proper land books before the adoption of the State Constitution, and was on said books at, and within five years after, the adoption of said Constitution, and the duty imposed by the Constitution of having said land entered had been discharged, and said grant was never within the purview or operation of the forfeiture provision of said Constitution, and was not forfeitable thereby. It was the fault of the officers of said state who had custody of the land books and public records, and who alone had authority to enter land thereon, that said land was not entered after 1883, as provided by the decree of the circuit court of Wyoming county, entered April 10, 1883, and no forfeiture could in any event accrue, to the benefit of the contesting defendants, from such nonentry and noncharging of taxes.

10. The said circuit court erred in treating said land as forfeited, but denying your petitioner's right to redeem the same; without the right of redemption afforded, the provisions of the statutes and Constitution of the State which purport to forfeit and divest the title of land for noncharging of taxes thereon are rendered wanting in due process of law, and are in contravention of Sec. I, of Art. 14 of the Amendments to the Consti-

tution of the United States, and are therefore void and inoperative.

11. The action of said court in dismissing said proceedings and petition and depriving your petitioner of the right previously and finally adjudged and decreed to him, and denying your petitioner's right to said land, deprived your petitioner of property without due process of law, in contravention of Sec. I of the Fourteent Amendment to the Constitution of the United States, and in contravention of article III, section 10 of the Constitution of West Virginia, and is erroneous.

12. The decrees, ruling and action of said circuit court were erroneous in many other respects appearing from the face of the record.

Your petitioner therefore prays an appeal from and supersedas to each and every of the said decrees entered by the said circuit court of Marion county in said cause of State of West Virginia vs. Henry C. King et als., on the 6th day of December, 1905, and at subsequent dates, hereinbefore referred to, attempting to define the boundaries and location of said Morris grant, and dismissing said suit or proceedings or your petitioner's petition as aforesaid; that the said decrees and proceedings be brought before Your Honors for review, and that said decrees and each of them be by Your Honors reviewed, reversed, set aside and held for naught.

And your petitioner will ever pray.

HENRY C. KING.

By MAYNARD F. STILES, *His Counsel.*

I, Maynard F. Stiles, an attorney and counsellor practising in the Supreme Court of Appeals of West Virginia, do certify that in my opinion there is error in the decrees of the circuit court for Marion county, mentioned in the foregoing petition, and that the same should be by said court reviewed and reversed.

Given under my hand this 20th day of November, 1907.

MAYNARD F. STILES.

State of West Virginia, To-wit:

The appeal and supersedeas prayed for in the foregoing petition

was allowed in Court at Charleston on the 3rd day of December, 1907. Bond is required in the penalty of $2000,000, conditioned according to law.

Attest: WM. B. MATHEWS,
Clerk Supreme Court of Appeals.

RECORD.

STATE OF WEST VIRGINIA
VS.) *IN CHANCERY.*
HENRY C. KING ET AL

Proceedings had in the Circuit Courts of West Virginia, for the Counties of Wyoming, Logan, Cabell and Marion, on the Chancery side of said courts. Be it remembered that this cause having been instituted, heard and decided in the Circuit Court of Wyoming County, and an appeal having been prosecuted from a decree rendered therein on the 30th day of September, 1897, to the Supreme Court of Appeals of West Virginia, and said decree having been reversed in part and affirmed in part and said cause having been remanded, certain proceedings were thereafter had in the Circuit Courts for the said counties, which are shown in the transcript of said cause heretofore certified to the said Supreme Court of Appeals by the undersigned Clerk, upon appeal from certain decrees entered in the said Circuit Court of Marion County, in said cause, on the 15th day of July, 1905; in addition to which the following preceedings were had in said cause, to-wit:

ANSWER OF C. W. CAMPBELL AND ASSOCIATES.
(Filed July 1, 1901)

IN THE CIRCUIT COURT OF *CABEL COUNTY.*

page 2.] MARCH TERM, 1901

STATE OF WEST VIRGINIA
VS.) *IN CHANCERY.*
HENRY C. KING, and others.

THE JOINT AND SEVERAL ANSWER OF C. W. CAMPBELL IN HIS OWN RIGHT AND AS TRUSTEE, AND J. L. CALDWELL, JOHN Q. DICKINSON, THOMAS H. HARVEY, GEO. F. MILLER, S. S. ALTIZER AND VICE NIGHBERT, TO THE ORIGINAL AND AMENDED BILLS, AND ESPECIALLY THE 5TH AMENDED AND SUPPLEMENTAL BILL.

Petitioner, John Q. Dickinson, says that he is seized and actually possessed of an estate in fee simple in and to the following tracts or parcels of land, situate in Logan County, West Virginia, on Dingess Run, a tributary of Guyandotte River to-wit:

438 acres conveyed to him by Patterson Dingess and wife by deed bearing date the 5th day of April, 1899, and recorded in the Clerk's office of the County Court of said County in Deed Book T, at page 172. Said grantors reserved 137 acres of the surface of said tract, and coal and timber for domestic purposes.

One other tract of 120 acres, another of 59 acres, and one of

47 acres on said Dingess Run, conveyed to him by William Stratton by deed bearing date the 8th day of May, 1897, and of record in said clerk's office in deed Book T, page 187. Said three tracts contain 254 acres, as shown by recent survey.

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Said petitioner, John Q. Dickinson, also owns 5-6 undivided of the following tracts conveyed to him by Patterson Dingess, and others, as heirs at law of Z. C. Dingess, deceased, by deed bearing date the 30th day of March, 1899, and of record in said Clerk's office in said Deed Book T, at page 164, *et seq.* to-wit:

498 acres, devised to said Z. C. Dingess by John Dingess.

189 acres, part of a tract in like manner devised.

57 acres, part of a tract in like manner devised.

34 acres, a tract in like manner devised.

100 acres, conveyed to said Z. C. Dingess by Chas. McDonald.

50 acres, conveyed to said Z. C. Dingess by George E. Bryan and wife.

40 acres, part of 75 acres conveyed to said Z. C. Dingess by J. E. Robertson and wife.

1 acre conveyed to said Z. C. Dingess by Wm. Ellis and wife.

225 acres, conveyed to sad Z. C. Dingess by William Stratton and wife.

100 acres, devised to said Z. C. Dingess by John Dingess.

43 acres, devised to said Z. C. Dingess by John Dingess.

160 acres, devised to said Z. C. Dingess by John Dingess.

50 acres, devised to said Z. C. Dingess by John Dingess.

Out of the last named tract one acre was reserved in and around the graveyard.

Also the following tracts, to-wit:

274 1-2 acres on Freeze Fork of Dingess Run.

1-2 undivided of 69 acres on Dick's Trace of Dingess Run; 1-4 of which was conveyed to petitioner by C. H. McDonald and wife by deed bearing date the 28th day of August, 1899, in the Clerk's office aforesaid, in Deed Book T, page 241.

388 3-4 acres on Rock House Fork of Dingess Run.

1-2 undivided of 281 acres on Dingess Run, conveyed to him by deed from John B. Wilkinson, Special Commissioner, and the

Guyandotte Mercantile Company, a Corporation, by deed bearing date the 27th day of July, 1899, recorded in said Deed Book T, page 213.

Another tract of 41 acres on Rock House Fork of Dingess Run, conveyed to petitioner by Simeon Browning and wife, by deed bearing date the 21st day of August, 1899, recorded
page 4.] in said Deed Book T, page 261. And an undivided 1-2 of 69 acres on Dick's Trace Fork of Dingess Run conveyed to petitioner by Park Burgess and wife, and others, by deed bearing date the 2nd day of September, 1889, in said Deed Book T, page 242; and one other tract of 540 acres on said Dingess Run, conveyed to petitioner by M. B. Mullins and others, by deed bearing date 30th day of March, 1899, and recorded in said Deed Book T, 163.

Petitioners C. W. Campbell, J. L. Caldwell and S. S. Altizer are seized and actually possessed of an estate in fee simple absolute of 34-35, in the proportion of 7-35 to said Altizer, 13 1-2-35 by J. L. Caldwell, and 13 1-2-35 by C. W. Campbell, in and to a certain tract of about 28 acres, situate at the mouth of said Dingess Run, and conveyed by Guy Lawson and wife by certain deed to S. B. Robertson and others. The remaining 1-35 is now vested in the children and heirs of Clarissa Music, who was one of the seven heirs at law of H. E. Ellis, deceased, who owned 1-5 of said tract at the time of his death.

Petitioner C. W. Campbell is seized and actually possessed in fee in trust for himself and J. L. Caldwell of 4 1-2 of the seven shares in the remaining 1/6 of the 13 tracts of land conveyed as aforesaid by Patterson Dingess and others, heirs at law of Z. C. Dingess, deceased, to petitioner John Q. Dickinson, which shares were conveyed to petitioner Campbell by S. B. Robertson and wife by deed bearing date the 5th. day of July, 1899, and of record in the Clerk's office aforesaid in said Deed Book T, at page 218. Also ½ undivided of a tract of 500 acres on said Dingess Run, granted by the Commonwealth of Virginia, to Ward & Allen, which half undivided was conveyed to
page 5.] C. W. Campbell by Dr. W. R. Prior and others, by deed bearing date the 21st. day of January, 1891, and

of record in said Clerk's office in Deed Book V, page 7.

Petitioners J. L. Caldwell, C. W. Campbell, Geo. F. Miller, Thos. H. Harvey, S. S. Altizer and Vicie Nighbert, are seized of an equitable estate in fee, and actually possessed thereof, in and to the following tracts and parcels of land, in the proportion of 1/5 undivided by the last four named, and 4/5 undivided by said C W. Campbell, in trust for himself and J. L. Caldwell in equal proportions; all of the purchase money for which has been fully paid, and petitioners are now entitled to a deed therefor from the Special Commissioner appointed for that purpose, to-wit:

205½ acres, 448 acres, 358½ acres, 110 acres, 482 acres, 198½ acres, 360 acres, 148 acres, 428 acres, 372 acres, 123 acres, 41 acres, 497 acres, 405 acres, 200 acres, 550 acres, 268 acres, 233 acres, 466½ acres, 85 acres and 53 acres, all of which tracts were regularly granted by the State of West Virginia, by L. D. Chambers Commissioner of School Lands of Logan County, under and by virtue of proper proceedings and decrees in the Circuit Court of said County to said Z. C. Dingess, by deeds bearing date respectively, March 1, 1889, March 1, 1889, March 1, 1889, March 1, 1889, January 10, 1888, March 28, 1888, March 28, 1888, March 1, 1888, March 1, 1888, March 1, 1888, 30 of September, 1887, September 30, 1887, September 30, 1887, September 30, 1887, September 30, 1887, September 30, 1887, September 30, 1887, September 30, 1887, September 30, 1887, March tember 30, 1887, September 30, 1887, September 30, 1887, March

1889, May 1, 1882, copies of which proceedings, de-
page 6.] crees and deeds will be filed herewith, as parts hereof,
in due time. And also ½ undivided of a tract of 500 acres, granted by Virginia, to Ward and Allen; 30 acres conveyed to said Z. C. Dingess by David W. Ellis, by deed dated 16th. of January, 1890; 24 acres conveyed to said Dingess by William Ellis by deed bearing date the 14th. of February, 1876; 89 acres conveyed by Daniel F. Bryan, by deed bearing date the 29th. day of May, 1888; 200 acres conveyed to him by John E. Robertson and wife, by deed bearing date the 8th. day of May,

1898; 117 acres granted to him by the State of West Virginia, by U. B. Buskirk, Commissioner of School Lands of Logan County, by deed bearing date the 29th. day of May, 1891, copies of which deeds will be filed herewith, as part hereof.

Petitioner C. W. Campbell, is seized and possessed of an estate in fee simple in and to a certain boundary of land situate on Rum Creek, and its branches, a tributary of the Guyandotte River, in Logan County, West Virginia, supposed to contain 7521 acres, and particularly described by metes and bounds in that certain deed, bearing date the 4th. day of August, 1899 to C. W. Campbell, Trustee, made by L. D. Chambers and wife and others, the original of which deed will be filed herewith in due time, as part hereof. The metes and bounds described in said deed embrace one tract of 550 acres, which is described therein by metes and bounds, now owned by L. D. Chambers and others; and a tract of 50 acres, claimed by Henry Jeffrey; 125 acres claimed by the heirs of Anthony Lawson; 209 claimed by Lawson heirs. One tract of 480 acres, and one of 314 acres, one of 200 acres, and one of 997 acres, formerly owned by the Pan Handle Coal & Iron Company, but now held by said C. W. Campbell, trustee; also one tract of an undivided interest in about 144 acres, claimed by J. W. Hinchman; one
page 7.] tract of 21 acres, claimed by J. C. Chambers; one tract of 51¼ acres claimed by L. D. Chambers, Jr., and one tract of 78¼ acres, claimed by Geo. Raines.

Said boundary of 7521 acres left, after deducting said reservations is made up of sundry contiguous tracts and surveys, as follows: One tract of 818 acres, one of 710 acres, one of 249 acres and one of 188 acres, regularly granted from the State of West Virginia by deed from L. D. Chambers, Commissioner of School Lands of Logan County to L. M. Chambers, bearing date the 20th day of October 1885; and 121 acres granted by like deed, bearing date the 25th. day of July, 1885; one other tract of 88½ acres, granted by like deed, bearing date the 8th day of May, 1886, and three other tracts of 216, 85 and 135 acres, granted by like deed, bearing date the

24th. of October, 1886, and three other tracts of 577, 435 and 198 acres granted by like deeds to J. L. Chambers, each of which bears date the 20th. of October, 1888; one tract of 382 acres, granted by like deed, bearing date the 28th. of August, 1883, to Doran and J. L. Chambers; one tract of 743 acres, granted by like deed to H. C. Raglan, bearing date the 24th day of December, 1886; one tract of 128 acres, granted by like deed to M. L. and J. L. Chambers, bearing date the 29th. day of August, 1883; and two other tracts of 615 and 208 acres, granted by like deeds to M. L. Chambers, bearing date the 29th. day of March, 1885; and two other tracts of 141 and 216 acres, granted by like deed by Hinchman, Commissioner of School Lands, to L. D. Chambers, both of which deeds bear date the 10th. day of June, 1881; and four other tracts of
page 8.] 56, 39, 60 and 217 acres granted by the Commonwealth of Virginia to James Chambers, by letters patent bearing date respectively August 30, 1842, August 30, 1842, February 2, 1852, July 30, 1877; and two other tracts of 80 and 100 acres, each conveyed to said James Chambers by deed from William Workman and wife, bearing date the 10th. day of May, 1857, and one tract of 100 acres, conveyed by said Workman and wife on the 23rd. day of August, 1847, to Asbery Chambers; and one tract of 200 acres, conveyed by said Workman and wife to H. F. Chambers, by deed dated May 10, 1851, which said four tracts were patented by the Commonwealth of Virginia, and two tracts of 69 and 59 acres, each granted by the Commonwealth of Virginia on the 1st day of August, 1851, to Jordon B. Mitchell; one tract of 49 acres granted by said Commonwealth of Virginia to John D. Mitchell on August 1, 1851; and one tract of 50 acres, granted by the State of West Virginia to Milton Burgess on the 16th. day of December, 1875; and one tract of 155 acres of patented land, conveyed by Benton and J. H. Perry to Isaac Perry by deed dated March 1, 1870; one tract of 104 acres, conveyed by Oliver Browning to L. D. Chambers by deed dated the 31st day of August, 1859; and five tracts of 100, 8, 400, 27 and 22 acres,

each granted by the Commonwealth of Virginia to L. D. Chambers, in 1857, 2nd. of February, 1852, 1st of September 1856, 1st of September, 1856, 1st of September, 1856, respectively, and three tracts, one of 50 acres, the other two of 100 acres each, granted to said L. E. Chambers by the State of West Virginia by letters patent bearing date the 9th, of February, 1871, 9th. day of February, 1871, and 5th. of December, 1870; two tracts of 25 acres each, granted by Vir-
page 9.] ginia to Jas. Chambers, one the 12th. day of August, 1830, and the other on the 5th. day of March, 1850. One tract of 50 acres, granted by Virginia to William Dingess on the 30th. of November 1818; one tract of 125 acres, granted by Virginia to Griffin Canterberry, on the 1st. day of August, 1855; one tract of 45 acres, granted by Virginia to John H. Perry, surveyed on the 22nd. day of May, 1850, and granted a short time thereafter. All of which several and sundry tracts are now vested in petitioner C. W. Campbell, in trust for himself and J. L. Caldwell and John Q. Dickinson, less the reservations heretofore specified.

And petitioner, C. W. Campbell, trustee, is seized and possessed of a tract of 480 acres, granted by the State of West Virginia, by L. D. Chambers. Commissioner of School Lands, to Lewis Millins, by deed bearing date the 2nd. day of March, 1889, and recorded in Clerk's office aforesaid Deed Book N, Page 508; and 200 acres, granted by the State of West Virginia to Milton Burgess, by letters patent, bearing date the 15th. day of October, 1875; 997 acres, granted by the State of West Virginia by Commissioner of School Lands to L. D. Chambers, by deed bearing date the 20th. day of October, 1886, recorded in Deed Book J. page 36; and 314 and 480 acres, granted by the State of West Virginia by Commissioner of School Lands to M. B. Mullins, by deed dated to the 12th. day of February, 1896, and recorded in the Clerk's office aforesaid, in Deed Book N, page 342. All of which tracts, although containing much less in quality than named, are now vested by *mesne* conveyances, in the said C. W. Campbell, trustee, for

the sole use and benefit of J. L. Caldwell and John Q. Dickinson.

These defendants aver that their titles to said lands were regularly derived, mediate or immediate, either
page 10.] from the Commonwealth of Virginia, or this State. by grant or deed, and are good, valid and paramount to all other alleged claims. All of said tracts on said Dingess Run form one contiguous and *and* compact body of land, and a major portion thereof is within the William McClearv grant of 100,000 acres, and a major portion of said land so with said McCleary survey is likewise within what is known as the W. D. Sell lines of the Morris grant of 500,000 acres.

Defendants Caldwell, Dickinson and Campbell aver that they have agreed in writing among themselves to unite, consolidate and merge their interests in all of said lands on said Dingess Run, together with those on Rum Creek, and hold such consolidated interest in equal proportions. These defendants aver that they, and those under whom they hold said lands hereinbefore particularly specified, have had and held continuously the actual visible, notorious, exclusive, adverse and uninterrupted possession by residence, enclosure and cultivation of said lands ever since the emanation of the title from the Commonwealth of Virginia, or this State, to each parcel, claiming the same to the extent of the bounds specified in said grants and deeds, for a period of more than ten years, and have paid all taxes charged or chargeable *or* each tract for each and every year during said time, and neither of said parcels, or any part of either, is delinquent or forfeited, either for the non-payment of such taxes, or for non-entry thereof on the land books. And they therefore plead and rely upon the bar of the statute of limitations against the relief prayed by the State of West Virginia, and against any relief asked by the said Henry C. King in respect to said lands. And whatever title the State of West Virginia may have otherwise had, and whatever title, if any at

all, the said Henry C. King may have otherwise had, is barred and transferred and vested in defendants respectively.

These defendants aver that no adverse claimaint to them, or to those under whom they hold respectively, have
page 11.] had said lands so owned by these defendants, or any part thereof, entered upon the land books of the County wherein they are situate, and charged with taxes, or paid any taxes thereon since the formation of the State of West Virginia, and no taxes have been paid upon said lands except by defendants respectively, and those under they hold. And these defendants, and those under whom they hold are and have been in position, according to the terms and conditions of the various Acts of the General Assembly of the Commonwealth of Virginia, prior to the creation of the State of West Virginia, in relation to escheated and escheatable lands, and lands forfeited for non-payment of taxes charged thereon, and lands forfeited to the State for non-entry thereof on the Assessor's land books, as well as according to the terms and conditions of Sec. 3 of Article 13 of the Constitution of the State of West Virginia, and the laws of said State since enacted, to take the benefit of any and all other titles, claims or color of title to said lands, or any part thereof, that were forfeited or treated as forfeited for any cause, and waste and unappropriated, escheated or escheatable to the State of Virginia or this State, or purchased by either State at sales made for the non-payment of taxes and not redeemed, *releasted* or othewise exhonorated, and these defendants claim the benefit of the forfeitures and escheat of the said lands, and they aver that all such titles so forfeited, or escheated, or escheatable to the State of Virginia, or the State of West Virginia, have been transferred to and vested in thse defendants, and those under whom they hold.

ESCHEAT.

These defendants are informed, believe and charge, that on the 20th. day of April, 1850, one Isaac Morgan, who was then the Escheator for Logan County, by an inquisition of escheat

taken by him as Escheator for Logan County and a regular jury of inquest returned by the Sheriff and impaneled and sworn according to law, ascertained, found and determined by said inquest that 200,000 acres, part of the Morris grant of 500,000 acres aforesaid, was escheated to the Com-
page 12.] monwealth of Virginia, because the title, legal and equitable thereto was in an alien or aliens, and not in a citizen or resident of the United States. A copy of which proceedings will be filed herewith, as part hereof. And that by like proceedings the rest and residue of said Morris Grant, to-wit, described as containing 300,000 acres, was likewise escheated by the State of Virginia, because the title, legal and equitable, thereto was found by said inquest to be in an alien, and not in a citizen or resident of the United States. A copy of said escheat proceedings from the Register of the Land Office of Virginia will be filed herewith as part hereof.

And defendants here now aver that whatever title, right, interest or estate in said 500,000 acres of land was then owned or claimed by John Joseph Marie Schmit Thornfeld, or Augusta Marie Francois Novino De Sericourt, or Louis Antoine Des Verges De Maupertuis, or by the association called and styled The Virginia Company Guyandotte, or by John Peter Dumas, trustee, if any title, interest or estate they then held, was escheated and passed to and vested in the Commonwealth of Virginia, and such escheat, and the title thereby transferrer to the Commonwealth of Virginia, was, by the laws of said State, and by the subsequent Constitution and laws of the State of West Virginia, transferred to and vested in these defendants, and those under whom they hold, so far as any of said lands may be situate within the lines and location of said Morris Grant of 500,000 acres.

MORRIS GRANT
LOCATION OF.

That it is true that the lands owned as aforesaid by these defendants respectively are situated within certain exterior lines

alleged to have been run and surveyed by one W. D. Sell, and set forth in a decree entered by the Wyoming Circuit
page 13.] Court on the 30th. day of September, 1897, in this cause; but these defendants aver that said lines are not the true and correct exterior lines of the said Morris Grant of 500,000 acres made on June 23, 1795, now claimed by the said Henry C. King. Said exterior lines so run by said W. D. Sell were improperly and incorrectly run and surveyed. and they embrace many thousands of acres which were never granted by the Commonwealth of Virginia to said Robert Morris by the letters patent under which the said Henry C. King avers that he now claims said land. as so located by said Sell. Defendants are informed, believe and charge that said W. D. Sell ran said lines at the instance of the said Henry C. King, and in accordance with his wish and desire and direction, and that said Sell, in so running said lines, wholly disregarded the corners and natural objects, and monuments, and true abuttals called for in said patent. Defendants aver that no land whatsoever lying to the West of the line run from the South-west corner called for in said Patent to the corner called for at the mouth of Gilbert's Creek, on the Bank of Guyandotte River, three sugar trees in a small bottom, was granted or conveyed by said Commonwealth by said Patent to said Robert Morris, and they aver that the true and correct location of the Western Boundary line of said survey or grant, from the south-western corner crosses Tug Fork of Big Sandy River at the mouth of Turkey Creek, which enters, said Tug Fork above the mouth of Ben Creek, and passes thence to the Guyandotte River at the corner called for at the mouth of Gilbert's Creek, and all the lands owned or claimed as aforesaid by these defendants respectively lie outside, to the West and beyond said Western line of said Morris Grant; and they do not constitute any part or parcel of land so granted to the said Robert Morris.

These defendants aver that the State of West Virginia has

no right, title, interest, claim, or color of title, under the forfeiture of the said Morris Grant, to any of the
page 14.] lands of these defendants hereinbefore mentioned, beyond the mere fact that W. D. Sell, improperly and unlawfully embraced the same in his pretended and incorrect survey of said Morris Grant, and the said Henry C. King consequently has no right, title, interest, claim, or color of title to any lands whatsoever lying to the west of the line crossing, Tug Fork at the mouth of Turkey creek, and cornering at the mouth of Gilbert's Creek aforesaid, and his right to redeem any lands west of said line, and especially the lands of the defendants hereinbefore specified, is hereby expressly denied, as well as the right of the State of West Virginia to sell the same for the benefit of the school fund. These defendants are advised, and therefore aver, that neither of them is in any respect bound, precluded or estopped by the decree rendered by the Circuit Court of Wyoming County on the 30th. day of September, 1897, in this cause, or by the action of the Supreme Court of Appeals of West Virginia in respect to said decree on the State's appeal therefrom, nor bound, precluded or estopped by the survey made by said W. D. Sell. The State of West Virginia, having parted with all her right, title, interest and estate in the lands hereinbefore described, and owned by these defendants respectively, before the institution of this suit in the Circuit Court of Wyoming County. Neither these defendants, respectively, nor those under whom they claim and own said lands respectively, were parties to the said suit or decree, and they have the right, as they are advised, to contest the right of the State of West Virginia, to sell said lands and to permit the said Henry C. King to redeem them.

MCCLEARY INTERLOCK.

These defendants aver that the lines so run by the said W. D. Sell as aforesaid, as and for the exterior lines of the said Morris Grant, include and embrace a large part of a survey or

tract of 100,000 acres, granted by the Commonwealth of Virginia, on the 21st. day of January, 1796, to one
page 15.] Wm. McCleary, thus creating a lap or interlock, and some portion of the lands aforesaid of these defendants respectively, lie within that part of said McCleary survey so embraced in said lines run by said W. D. Sell, and so within said lap or interlock.

Defendants aver that in the deed from John R. Reed, trustee, and David W. Armstrong, to John V. LeMoyne, bearing date the 29th. day of September, 1891, a copy of which was filed by said Henry C. King as Exhibit "K. 8", and under which he claims title, or right to redeem, there was reserved and excepted by the said John R. Reed, trustee, from the operation of said deed, and not conveyed, *inter alia, "any interlock that may exist between said 500,000 acre tract of land hereby conveyed and another certain tract of land belonging to said Reed, Trustee, as aforesaid, containing 100,000 acres patented to Wm. McCleary by the Commonwealth of Virginia on the 21st. day of January, 1796. It is not thought that any such interlock exists, but if, by a proper running of the lines of said two surveys, it shall appear that they conflict, such interlock is not intended to be hereby conveyed."*

And defendants aver that said Henry C. King, grantee of said John V. LeMoyne, thereby acquired no right, title, estate or claim to any part of said William McCleary tract of 100,000 acres, either in or out of said interlock, nor any right to redeem the same, or any part thereof, and therefore no right to any part of said lands of these defendants; nor has the State any title to said lands, or right to sell the same for the benefit of the school fund, by reason of any forfeiture of any title or pretended claim of title to the Robert Morris Grant of 500,000 acres.

These defendants aver that the said survey of 100,000 acres so granted to William McCleary, and every part thereof, has been omitted from the land books of the counties in which the

same is situate for each and every year since the year 1838 in the names of the claimants thereof under said
page 16.] grant, or under the Act of the General Assembly of Virginia, passed on the 15th. day of March, 1838, and the owners or claimants thereof have failed for each and every year since said date to cause said land te be entered on the land books, and himself or themselves charged with taxes thereon, and he and they have paid no taxes thereon whatsoever from 1838 to the present time. And these defendants aver that said tract of 100,000 acres was forfeited for non-entry and non-payment of taxes, and vested in the State of West Virginia, and the benefit of such forfeiture has inured to these defendants in respect to such of their lands as lie within said McCleary survey.

PITTSBURG NATIONAL BANK OF COMMERCE'S TITLE.

These defendants are advised and therefore aver that the claim or pretended title or right set up by said Henry C. King to an undivided ¾ of the said Robert Morris tract of 500,000 acres derived through the quit-claim deed from the Pittsburg National Bank of Commerce to David W. Armstrong, bearing date the 23rd. day of June, 1893, a copy of which was filed herein by said King as "Exhibit King 16", and the deed from said Armstrong to said King bearing date the 6th. day of August, 1893, a copy of which was filed herein by said King as "Exhibit K. 17", and by reason of the forfeiture thereof the State is claiming title to ¾ undivided of said land, is invalid, null and void; because said pretended quit-claim deed from said Pittsburg National Bank of Commerce to said Armstrong was never executed and delivered by said Corporation to said Armstrong.

The source or beginning of the said pretended claim of title originated in a certain pretended deed, purporting to have been executed by one Jas. M. Laidley, styling himself Special Commissioner, to one Anthony Lawson, bearing date the 10th. day

of March, 1856, and purporting to have been executed by said Jas. M. Laidley on behalf of John Joseph Marie
page 17.] Schmit Thornfeld, Augusta Marie Francois Novino De Serecourt, Louis Antoine Des Verges de Maupertuis and Emile Dumas, and by virtue of a certain decree claimed to have been rendered by the Circuit Court of Logan County on the 2nd. day of March, 1855, in a certain pretended suit therein, wherein Claude Bernarde is averred to have been complainant, and Theodore Dallarde, and others, are averred to have been defendants; and these defendants aver that no title passed by said pretended deed, because—

First. The said John Joseph Marie Schmit Thornfeld, Augusta Marie Francois Novino De Serecourt, Louis Antoine Des Verges de Maupertuis and Emile Dumas had no right, title, interest, estate or lien whatever in or to said land mentioned in said pretended deed.

Second. The said Circuit Court had no jurisdiction to render such pretended decree, either over the persons of the alleged defendants, or over the subject matter. The alleged defendants were not served with process to answer in said pretended cause, nor did either of them appear therein, or in any manner submit themselves to the jurisdiction of said Court. There was no seizure by attachments, or otherwise, by any process whatsoever, of said lands, or interest therein, and the alleged plaintiff therein had no lien at any time on said land or any interest therein, by mortgage, deed of trust, judgment, vendor's lien, or otherwise, to be enforced by such suit.

Third. The alleged parties to said alleged suit of Claude Bernarde vs. Dallarde, and others, in the Circuit Court of Logan County, did not have any right or title to any part or interest or share in said Robert Morris survey of 500,000 acres, at, before or after the pretended institution of said suit, or at the alleged date of said pretended decree, or at the alleged date of said deed, and the Circuit Court of Logan County had no authority to dis-

pose of any interest therein. Defendants are informed, believe and charge that John Peter Dumas, trustee, departed this life intestate on the ..... day of ..... 1847, and his successor was not appointed trustee in his room and stead until the ..... day of June, 1855, and neither said John Peter Dumas, trustee, or Josiah Randall, his successor in trust, was a party to said pretended suit of Bernarde vs. Dallarde, and others, and neither was The Virginia Company Guyandotte, a Corporation, created under the laws of France, a party to said suit, nor the trustees of said Company, who held the legal title, as claimed, to 300,000 acres out of the 500,000 acres, parties to said suit. That neither the Virginia Company Guyandotte, or its Trustees, or the said Maupertuis, or Sericourt, at or after the pretended institution of said alleged suit, owned or claimed to own the said 500,000 acres.

page 18.]

FORFEITURE OF PITTSBURGH NATIONAL BANK OF COMMERCE'S TITLE.

These defendants, still denying that any right, title, interest or estate whatsoever in and to any part or portion of the 500,000 acres vested in the said Anthony Lawson under and by virtue of his pretended purchase and deed from J. M. Laidley, Special Commissioner, but if any such right, title, interest or estate passed by said deed, the same was afterwards forfeited to and vested in the State of West Virginia and by virtue of the Constitution and laws of said State, such forfeiture inured to the benefit of these defendants respectively, and to those under whom they claim, in respect to such lands, if any, as are situate within said Morris Grant of 500,000 acres.

Defendants deny the allegations in the petition and answer of Henry C. King that "after the formation of said State the officers thereof charged said undivided ¾ of said tract with taxes upon the land books of Logan County, in the name of Anthony Lawson, from and including the year 1865 to and includ-

ing the year 1876, on 300,000 acres, and that the taxes were duly paid by said Lawson." Said allegation is *is*
page 19.] false and untrue. Defendants are informed and believe and charge that the said Anthony Lawson was not charged with said tract of land or with any portion or share thereof, as containing 375,000 or any other number of acres, on the land books of Logan County from the date of his deed of 1856 to 1865, or for the years 1865 to 1872 inclusive. And said Lawson paid no taxes thereon during said years; and the said ¾ undivided of said tract, and then claimed by said Anthony Lawson, was entirely omitted from the land books of Logan, Wyoming and McDowell Counties, from the date of his deed from J. M. Laidley, Special Commissioner, down to and including the year 1872, and no taxes were paid upon his claim of title under said deed for any or either of the years between said dates, and the said interest, title and claim of title under said deed became forfeited to the State of Virginia, before the formation of this State, for non-entry upon the land books of the proper county or counties, and, after the formation of this State it was forfeited to and the title, whatever it was, passed to and vested in the State of West Virginia by reason of the omission of the same from said land books and the failure to pay taxes thereon; and except in so far as such forfeiture has inured to the benefit of these defendants, and those under whom they hold, to such of their lands, if any, as may be situate within said grant, and to others similarly situated, all the right, title and interest in the estate of the said Anthony Lawson under said deed became vested in the State of West Virginia. Defendants deny that the said Black or Suydan paid the taxes upon said 375,000 acres for the year 1878, and they deny that the taxes therafter until and including the year 1882 were paid by Black and Suydan, or Reed, or the Pittsburg National Bank of Commerce, or by any or either of them; but, on the contrary they aver and charge that J. L. Black and A. Suydan were assessed on the land books of Logan County for the year 1877 with 375,000 acres and for the year

1878, with 100,000 acres; and the Pittsburg National Bank of Commerce was charged on the said land books for the
page 20.] years 1879, 1880 and 1882 with 100,000 acres, as will fully appear from the certificate of the Clerk of said Logan County, herewith filed, marked "Exhibit Pittsburg National Bank", and prayed to be read and and taken as part hereof. And in the years 1883, 1884, 1885 and 1886, the Pittsburg National Bank of Commerce, then recognizing, and knowing, and acquiescing in the fact that many thousand acres formerly claimed by it had been transferred by forfeiture to the occupants thereof, and it accordingly had its claim, so far as it related to any lands then in Logan County, to be reduced in quantity to 30,000 acres, and abandoning all the rest and residue thereof in said Logan County to adverse claimants, it caused 15,000 acres of said 30,000 to be entered on the land books of Logan County in Magnolia District, and the residue, to-wit, 15000 acres, in Tridelphia District of said County; and defendants aver that said lands so assessed were for each and every year from 1877 to 1886 inclusive, returned delinquent for the non-payment of the taxes so assessed thereon, and that the same were regularly certified by the Auditor to the Sheriff of said County, to be sold for the non-payment of the taxes so assessed thereon, and the said sheriff, at such sale of land in said County, beginning with the year 1879, and every two years thereafter, sold the lands for the two years taxes prior to the sale respectively, and at each and every one of said sales, the State became the purchaser, as follows:

For	the	years	1877-1878	$1519.06
"	"	"	1879-1880	1540.49
"	"	"	1881-1882	1117.59
"	"	"	1883-1884	586.50
"	"	"	1883-1884	587.21
"	"	"	1885-1886	300.27
"	"	"	1885-1886	310.47
Making a total of				$5969.59

And defendants are advised and aver that the interest and es-

tate, if any, at all, acquired by said Anthony Lawson under the deed *aforesaid* for ¾ undivided of said Morris Grant of 500,000 acres, was forfeited to and vested in the State of

page 21.] West Virginia for the non-payment of the taxes aforesaid, and by the purchase thereof by the State at sales made by the Sheriff for taxes; and the same has not been redeemed, released, or in any manner exonerated or relieved from said taxes or sales, and defendants aver that said share or interest has ever since 1886 been entirely omitted from the land books of Logan, Wyoming and McDowell Counties, and the said alleged owners have, and each of them has failed to have said ¾ interest in the said tract of land so claimed to be entered on the land books of said counties, or any or either of them, and themselves or or either of them, or or any of them, charged with taxes thereon, for any or either of the years since 1886 to the present time, and have paid no taxes thereon for any or either of said years, nor have they, or either of them, or any person claiming by, through or under them, redeemed said interest from said forfeiture or sale, nor has such interest been exonerated from the forfeiture or sale hereinbefore alleged; and defendants aver that whatever title passed to the said Lawson, if any, under the deed aforesaid, except in so far as said forfeiture has inured to the benefit of the defendants respectively, and those under whom they hold, and to others, as vested in the State of West Virginia since the formation thereof, and is still so vested in said State, and defendants therefore deny the right of the State to sell, and the right of the said Henry C. King to redeem any of the lands of these defendants which may be situate within the Morris Grant of 500,000 acres.

These defendants are advised, believe and charge that the alleged decree of redemption of the 10th. of April, 1883, procured by Randall, trustee, and mentioned in the amended bills even in so far as it purports to release Randall, Trustee's,

page 22.] title from forfeiture, is null and void; but even if valid and binding, which these defendants deny, they aver that the decree shows that the Circuit Court of Wyoming

County refused to allow the Pittsburg National Bank of Commerce, the remote assignee of said Lawson, to redeem its pretended title to said 500,000 acres of land, or any interest, share or portion thereof, and defendants aver that the claim of title set up by the Pittsburg National Bank of Commerce is hostile and adverse to the title and claim of the said Randall, trustee, and defendants deny that the payment by said Randall mentioned in said decree operated as a redemption and release, or as an exoneration of said taxes on said land, so far as the pretended title of the Pittsburg National Bank of Commerce is concerned; but on the contrary left said title still forfeited and vested in the State, except so far as the forfeiture has inured to the benfit of persons claiming under Section 3, Article 13, of the Constitution, and the laws of said State, and the laws of Virginia, and the said forfeiture, as well as prior and subsequent forfeitures, has never been released, redeemed, or in any manner exonerated.

ALLISON-GROOM CLAIM.

These defendants deny the allegation in the answer of Henry C. King that on the 30th day of August, 1830, James Swann executed and delivered deed, purporting to convey the said Morris Grant of 500,000 acres to Samuel Allison; and these defendants deny that the State of West Virginia has any title derived by forfeiture through or by the said Samuel Allison; and these defendants deny that the said Samuel Allison ever had any right, title, interest or estate whatsoever in said tract of 500,000 acres.

page 23.] These defendants further deny that any right, title, interest of estate whatsoever, either legal or equitable, in and to said 500,000 acres of land, passed to or vested in John Peter Dumas, trustee, by virtue of the Act of Assembly of the 15th, day of March, 1838, or in any other manner, and defendants aver that said Act, in so far as it attempted to transfer and vest in said John Peter Dumas any title whatsoever, legal or equitable, to said Morris Grant of 500,000 acres, is ab-

solutely null and void, and contrary to the then Constitution of the State of Virginia. These defendants aver that neither Samuel Allison, nor any grantee of his, mediate or remote, of said 500,000 acres, or any interest or estate therein,(ever caused said land to be entered upon the land books of the proper counties, where the same was situate, and charged with taxes for any of the years from 1830 to the present time, and if he acquired any interest or estate whatsoever in said land, the same became vested in the Commonwealth of Virginia, or the President and Directors of the Literary Fund, before the formation of this State, and long before the enactment of the 14th. Amendment to the Constitution of the United States; and defendants aver that the payment of $8,000 by Robert E. Randall, trustee, into the hands of the Commissioner of School Lands of Wyoming County, at the April term, 1883, of the Circuit Court of that County, did not, in any manner, inure to the benefit of the said Samuel Allison, or his grantees or assigns, and did not operate to release the forfeiture of the alleged claim of title under said Allison; and the payment of any taxes by Anthony Lawson, J. L. Black or A. Suydan, Wm. Reed, or the Pittsburg National Bank of Commerce, or by any person claiming through or under them, or either of them, did not inure to

page 24.] to the benefit of said Allison's title, which was hostile and adverse, and defendants are advised that if said Henry C. King relies upon said *Allison* claim of title, that he should be required to pay all taxes chargeable thereon from the year 1863, down to the present time, with interest and damages.

These defendants say that since the year 1795, now more than a century past, the claimants of said Morris Grant, who, for the most part, were aliens and non-residents, have utterly neglected to take possession of said land, and have never cleared or improved one acre of it, and have contributed, by way of taxes, comparatively speaking, but a small pittance to the burdens of the country, and that, too, at long and irregular intervals. During that whole period they stood silently by, without pro-

test or objection, and saw the people without notice of their claim, purchase, in good faith and for valuable consideration, from the Commonwealth of Virginia and the State of West Virginia, sundry portions of land now claimed to be within said Morris Grant, and clear away the forest and convert the then wilderness into productive fields, erect homes, churches and school houses, construct highways, and with their toil and taxes thereon contribute to the advancement and development of the country, and to the education and betterment of the community. During that time they had knowledge of the persistent and vigorous effort made by the Commonwealth of Virginia and the State of West Virginia to collect from them their annual contribution upon said land for the maintenance of peace and good order, yet they stood aloof, and refused and neglected to report said land for taxation, and refused to pay any taxes thereon, and during all that time they had notice of the laws of the two States disposing of property on which taxes were

page 25.] not paid for a given time.

A contrast of such conduct upon the part of the citizens in reclaiming the wilderness and erecting, with their toil and taxes, peaceful homes and desirable communities, with that of the said King, and those under whom he claims, in their utter neglect of their every obligation to the Commonwealth, affords a striking picture. The said King, after a century of neglect and abandonment of both land and duty, now comes upon the premises, and finding it made habitable and of value by the sweat and money of others, sets up the long neglected and abandoned and stale claim to said land, and makes, what appears to these defendants as a wild and absurd claim as to the extent of the survey, and thereby creates unrest and a feeling of insecurity in what was before a peaceful and contented community.

These defendants aver that the claimants of said land under John Peter Dumas, trustee, and under Samuel Allison, and under the said Lawson, have long since abandoned said land as worthless, refused to pay taxes thereon, or to reduce said land to possession, or to improve the same, and such claims are now

barred by staleness and lapse of time, and that the said King is now estopped and precluded, by his conduct, and that of those under whom he claims, to come in at this late date and seek to recover said land from those who have purchased the same for value, and have discharged their obligation to the Commonwealth. And these defendants plead and rely upon said abandonment and neglect and staleness of claim in bar of the relief prayed by the State, and in bar of the relief prayed by the said Henry C. King.

They therefore pray that the said original, and the several amended and supplemental bills be dismissed as to these defendants and their said lands, and that no sale there-
page 26.] of be had for taxes as prayed, and that King be not permitted to redeem the same, or any part thereof; and that they be quieted in their possession; and that it may be ascertained and adjudged that the said lands of these defendants are not situate within the Morris Grant of 500,000 acres, and for such other, further and general relief as the Court may see fit to grant.

C. W. CAMPBELL
C. W. CAMPBELL, *Trustee.*
J. L. CALDWELL.
JNO. Q. DICKINSON
THOS. H. HARVEY.
GEO. F. MILLER.
S. S. ALTIZER.
VICIE NIGHBERT.

By Counsel.

page 27.] ANSWER OF KING TO ANSWER OF CAMPBELL AND ASSOCIATES

(Filed July 14, 1901)

In the Circuit Court for West Virginia for the County of Cabell.
State of West Virginia, et als.

vs.

Henry C. King.

The Answer of Henry C. King to a bill of complaint filed here-

in by C. W. Campbell in his own right and as trustee, J. L. Caldwell, John Q. Dickinson, Thomas H. Harvey, George F. Miller, S. S. Altizer and Vicie Nighbert, against said Henry C. King, on the first day of July, 1901, and by them improperly styled their answer to the original and amended bill of the State of West Virginia filed herein.

To the Honorable E. S. Doolittle, Judge of said court:—

Now comes the said defendant HENRY C. KING and not waiving his demurrer to said bill of said C. W. Campbell and others but relying and insisting upon the same, for answer to said bill of said Campbell, Caldwell, Dickinson, Harvey, Miller, Altizer and Nighbert, miscalled by them an answer to the bills of the State of West Virginia as aforesaid, or to so much of same as he is advised that it is material for him to make answer unto, says:

I.

That this defendant denies that the said C. W. Campbell, either in his own right or as trustee or otherwise, and the said John Q. Dickinson and J. L. Caldwell are or that either of them is, or at the time of filing said bill or at any other time was, seized in fee or otherwise or actually or otherwise possessed of, or owns or owned or has or had any valid title or claim to or interest in any of the tracts of land situate on Rum creek or Dingess Run or elsewhere in Logan county, West Virginia, mentioned or referred to in their said bill, and denies, that said Thomas H. Harvey, George F. Miller, S. S. Altizer or Vicie Nighbert have or ever had any valid title to any of said lands except such as they have derived from this defendant since the filing of their said bill.

[page 28.]

II.

That this defendant denies that the claim of title of the said Campbell and his co-complainants in said bill to the several tracts therein mentioned or to any one of them was regularly derived mediately or immediately from the Commonwealth of Virginia or from the State of West Virginia, and avers that at the time when

the pretended patents for such of said tracts as are claimed under letters patent issued and when the entries and surveys were made upon which such patents profess or pretend to be based, and at the time that such of said tracts as are claimed under pretended sales and deeds from the commissioner of school lands of Logan county were attempted or pretended to be sold or conveyed, the land embraced within said tracts or any of them or any part thereof was not subject to entry, survey, grant or sale in any manner by either of said States or by any officer or agent thereof, the same having previously been granted to Robert Morris and being then held by valid title by his grantee under whom this defendant holds, nor had any officer or agent of either of said States any lawful power, authority or right to execute or deliver any letters patent or other writing of any kind whatsoever purporting or attempting to pass any title to or interest in said land, and all the pretended grants, sales, patents and deeds under which said complainants claim title are null and void and no title or right of any kind passed thereby or thereunder.

III.

That this defendant does not know whether or not said tracts claimed by said Campbell and his said co-complainants or any of said tracts are contiguous or form compact bodies, and therefore denies that they are contiguous and demands proof of such allegation, if the same be held to be material, and denies

page 29.] that the said complainants or those under whom they claim have had or held actual or visible or notorious or exclusive or adverse or uninterrupted possession of said tracts of land or any of them by residence, cultivation or enclosure or otherwise, since the emanation of the title from the State of Virginia or of West Virginia, or from any other point of time, for the period of ten years or any other period of time, and denies that any title to said lands ever emanated from either of said States except to the grantor of this defendant.

IV.

That this defendant denies that the title of this defendant or any title that the State of Virginia ever had or could have is barred,

transferred to or vested in the said Campbell and his said co-complainants or in any other person than this defendant, and avers that neither of said states has had any title at a time when it could be vested in said complainants.

V.

That this defendant denies the allegation in the bill of said Campbell and his said co-complainants that no person claiming adversely to them or those under whom they claim ever had said land entered upon the land books of the county in which the same is situated or charged with taxes or paid taxes thereon since the formation of the State of West Virginia, and avers that the grantors of this defendant have had the land claimed by defendant, including the sundry tracts aforesaid, entered upon the land books of the proper counties and charged with taxes and have paid taxes thereon before and since the formation of said State.

VI.

That this defendant denies that the said Campbell and his said co-complainants or those under whom they claim, or that any of them is or ever has been in a position to take any legal benefit whatever of any forfeiture or escheat or sale for taxes, if any has ever occurred, of the Morris grant, and denies that there has ever been any valid escheat, forfeiture or sale of said grant since a time prior to the year 1838, and denies that any title to or
page 30.] interest in the said Morris grant or to any land embraced therein has been in any manner transferred to or vested in the said Campbell and his said co-complainants or any person under whom any of them claim, except so far as the same has been conveyed to said Harvey, Miller, Altizer and Nighbert by this defendant since the institution of this suit as aforesaid.

VII.

That this defendant has no knowledge whether or not, any proceedings were ever instituted by or before one Isaac Morgan, as escheator, for the escheat of said Morris grant, or any part thereof, for alienage, as set out in the said bill of the said Campbell and others, or otherwise, but he says that if any such proceeding was ever had, the same was unauthorized and illegal and neither passed

any title to the Commonwealth of Virginia or to any person nor deprived the owners of said grant of title thereto; and further says that said grant was not subject to escheat for alienage or for any other cause, nor was such proceeding, if any was had, directed against the true owners of said grant. But if any title passed by any such proceedings, not only is the State estopped by subsequent receipt of taxes thereon from asserting title thereto, but the same was afterwards released to Robert E. Randall, Trustee, by the State of West Virginia, and never vested in said Campbell or his co-complainants or in any person under whom any of them claim.

VIII.

That defendant denies that the boundaries of said Morris grant set out in the decree rendered herein by the Wyoming Circuit Court on the 30th. day of September 1897 and affirmed by the Supreme Court of Appeals are not the true and correct exterior lines and boundaries thereof; and denies that said lines embrace any land not granted to said Robert Morris, except such land as was held by older and better title at the time of the grant and was excepted therefrom, but avers that said boundaries contain many thousand acres less than the quantity of land paid for and stated to be contained in said grant.

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IX.

That this defendant denies that said Sell, who resurveyed said grant, ran the lines thereof as he was directed by this defendant to run them or that this defendant directed said Sell how to run said lines, except to run the unestablished lines of said grant according to the courses and distances given therefor in the grant, with such variation as should make them conform with the courses at the date of the grant and connect with the western line of the 480,000 acre tract with which the last line of said 500,000 acre grant called to run, which this defendant was and is advised was the proper legal way of determining the boundaries of said grant; and this defendant says that said lines were properly and correctly run and located by said Sell and are properly described in said decree of September 30th, 1897, and embrace the land described in this defendant's amended petition and answer herein, and the several

tracts of land claimed by the said Campbell and his associates, all which lands were and are embraced in the grant to Robert Morris and are owned by this defendant.

X.

That this defendant denies that the State of West Virginia parted with or conveyed any title to the persons under whom said Campbell and his co-claimants claim, or that the said State had any title or interest in said lands to convey, and avers that the deeds and proceedings under which they claim are in every instance unauthorized and void, and in most if not all instances wholly fraudulent, and ineffectual to convey title from said State if any title said State had had.

XI.

That this defendant denies that said Campbell and his co-complainants are not bound, concluded or estopped by said decree of September 30th, 1897, and avers for reasons that will hereinafter more fully appear, that they are and each of them is bound, concluded and estopped by said decree and by the decree of the Supreme Court of Appeals from denying, disputing or
page 32.] relitigating any matter adjudged or decreed by said decrees.

XII.

That this defendant admits that the exterior lines of his said Morris grant are overlapped by the exterior lines of the tract of land patented to William McCleary as a tract of 100,000 acres and which was claimed by the State of West Virginia under forfeiture, and by John R. Reed, trustee, at the time of the execution of the deed from said Reed to this defendant's grantor, LeMoyne; but this defendant is advised that no interlock or area in fact exists or ever existed, because the said McCleary grant, which contains within its boundary lines 175,000 acres of land of which only 100,000 acres purport to be granted to McCleary, 75,000 acres being reserved therein for prior claims, and said 100,000 acres is contained within said lines and outside the lines of said Morris

grant, which is elder and no part of which could be or was intended to be covered by the grant to McCleary.

XIII.

And this defendant further says that the question of interlock does not concern said Campbell and his co-complainants, but only said Reed and the State and this defendant, and the question of right between them has been adjudged and determined in favor of this defendant as to the whole of said Morris grant, and he avers that he now has title to the whole thereof, except the portions conveyed by him to the said Harvey Miller, Altizer and Nighbert.

XIV.

That this defendant has no personal knowledge concerning the non-assessment of said McCleary grant, but he is advised and avers that no forfeiture of said grant for any cause has effected or could affect unfavorably this defendant's title to said Morris grant and vested neither in the State nor in any person under whom the said Campbell and his co-complainants claim any title to any land within the said boundaries of said Morris grant.

XV.

That this defendant denies that the deed from the
page 33.] Pittsburg National Bank of Commerce to David N. Armstrong, dated August 6th, 1898, was not executed or delivered to said Armstrong by said corporation, and avers that the same as duly executed, acknowledged and recorded and passed to said Armstrong the title of said corporation to the land therein described. And in further *denieal* and refutation of the allegations in the bill of said Campbell and his co-complainants concerning the deeds and proceedings through which said corporation claimed title this defendant avers that at the time of the institution of the suit of Claude Bernarde vs. Theodore Dallards, et als. in the circuit court for Logan county the legal title to at least 300,000 acres of said land was vested in said Auguste Marie Francois Fermin Noverre de Serecourt and Louis Antoine de Verges de Maupertuis, while the "Swan Estate" held a mortgage or vendor's lien thereon for all the purchase money, and the said John Joseph Marie

Schmit Thornfield claimed the legal title to the residue of said land, and that the said court did have jurisdiction of said land and of all the parties to said suit, as this defendant is informed, and lawful jurisdiction to pronounce the decree recited in said deed from James W. Laidley, special commissioner, to Anthony Lawson, and that said deed passed to said Lawson all the said title, interest and claim of the parties to said suit to the land that said deed purports to convey. It is true as this defendant is informed, that Josiah Randall, the trustee of said "Swan Estate" was not a party to said suit, neither was said Lawson a party to the subsequent suits in the circuit court for Kanawha county in which said Randall was appointed trustee and the rights and claims of said Randall, trustee, and of said Maupertius, Serecourt and others litigated as between themselves, nor was the title that he acquired by said deed from commissioner Laidley affected thereby. This defendant is not informed whether or not the so-called "Virginia Company Guyandotte" was a party to said suit, but the said Company has neither legal existence nor title to said land and ought not to have been a party thereto. This defendant is advised that the legal affect of all said proceedings, if material, is a question of law for the court and cannot be affected by averment or denial, but this defendant says that by virtue of the sundry conveyances set out in this defendant's answer to the bill of the State in this cause and exhibited therewith and which are hereby referred to and made part hereof this defendant has become vested with all the title legal and equitable of all the persons aforesaid and all the title legal and equitable that was originally granted to said Robert Morris.

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XVI.

That this defendant denies the assertion of the said Campbell and his co-complainants in their said bill that the statement of this defendant in his answer to the bill of the State concerning the assessment and payment of taxes upon said land in the name of said Lawson is not true, and avers that said Campbell and his associates are well informed and do know that said Anthony Law-

son was charged with taxes on said land as 375,000 acres in Logan county, for the years 1865 to 1876 inclusive and that said taxes were paid, and that said land was likewise charged with taxes at 375,000 acres until the year 1878 to James L. Black and Abraham Suydam, the grantors of said Lawson, who paid said taxes; and that afterwards the assessment of said land in said county was reduced to 100,000 acres and at that amount charged to said Black, Suydam and the Pittsburg National Bank of Commerce up to and including the year 1882, and the taxes thereon paid by them.

XVII.

That this defendant has no knowledge concerning the charging of taxes on any portion of said Morris grant in the name of said Pittsburg National Bank of Commerce after 1882, but is informed that none of said land was thereafter charged to said Bank in said county, and denies that said Bank had its claim of title in any way reduced, or acknowledged that any of said land had been transferred to other persons, and denies that any part thereof was transferred to any other person, except by its deed aforesaid to said Armstrong, or that said Bank ever abandoned
page .35.] or could abandon title to any part of said land; and upon information and belief denies that any portion of said Morris grant was sold for taxes in the name of said Pittsburg National Bank of Commerce after the year 1882.

XVIII.

That this defendant denies that the interest held or claimed by said Bank or by said Lawson has been forfeited to the State of West Virginia for any cause, or that the same has in any manner or to any extent or for any purpose vested in said State of West Virginia or in any person except this defendant and his grantor, and admits that said State has no right to sell the same.

XIX.

That this defendant denies that the decree of the Wyoming Circuit Court entered April 10th, 1883, releasing to Randall, trustee, the claim of the State of West Virginia to said Morris grant was null and void, but avers that as such release the same was and

is valid. But this defendant is advised that so far as it undertook to adjudge the merits of the title of said Bank, which did not ask to redeem said land, it's title not being forfeited, but sought a decree to quiet title against the said Randall, the said decree was inoperative.

XX.

This defendant admits that the State of West Virginia never derived title to any of said Morris grant by forfeiture from Samuel Allison or any other person under whom this defendant claims, and he avers that if the Commonwealth of Virginia acquired any title from said Allison such title was transferred to and vested in John Peter Dumas, trustee, by the act of the General Assembly of said commonwealth adopted March 15th, 1838, and has come down to this defendant by and through the deeds from John R. Reed, the successor in trust of said Dumas, to LeMoyne, and from said LeMoyne to this defendant. But if said Commonwealth did not in any way acquire the title of said Allison, then the same has become vested in this defendant by virtue of the conveyances from said Allison to Holbrook and from the heirs, devisees and trustees of Holbrook to Groom and Groom to Armstrong.

page 36.] XXI.

That this defendant denies that said Act of March 15th, 1838, so far as it undertook to vest title to said land in said Dumas, was contrary to the Constitution of Virginia or was otherwise invalid and avers that the said act was valid and effectual to convey and did convey to and vest in said Dumas, in trust, all the title that said Commonwealth or the President and Directors of the Literary Fund had in said Morris grant, however acquired or derived.

XXII.

That this defendant denies that the said Randall, trustee, the Pittsburg National Bank of Commerce and its predecessors and the successors in interest of said Allison claimed said land under adverse titles, and avers that they claimed the said land under the same title, to-wit, the said Morris grant, and that the State was

not entitled to charge and collect upon said grant more than one State tax, and that the payment of such tax upon said Morris grant relieved all said claimants from any demand of said State thereon, and relieved said grant from lawful liability to sale or forfeiture if any might otherwise have accrued.

XXIII.

That this defendant admits that he and most of all those under whom he claims have been, by accident of birth, aliens or non-residents and have never cleared one acre of said land, but he is advised that they were not required by any law or moral obligation to do so, and that such failure gave neither the State nor any other person any right to said land, nor gave to those persons who did wrongfully clear the said land of timber, any right to said timber or right to complain that they were afforded opportunity to steal it; but this defendant denies that he or any one else ever saw the said Campbell or his co-complainants or those under whom they claim erect any churches or school houses or "homes" or construct any highways upon any of the land claimed by them in their bill aforesaid and embraced in this defendant's amended petition, or convert any of said land into productive or other fields. They have indeed "cleared away the forest" or so much of it
page 37.] as they deemed profitable to clear away, leaving the land and every rod thereof more a wilderness and vastly less valuable than before; but that forest belonged not to them but this defendant and his grantors whom they have robbed thereof.

XXIV.

That this defendant denies that the Commonwealth of Virginia or the State of West Virginia ever made any effort whatever to collect taxes from this defendant or those under whom he claims that was not wholly successful and readily complied with, except where the same in this and other like cases has been frustrated or delayed by meddlesome interference; and denies that this defendant or any one under whom he claims has "stood aloof and *and* refused or neglected to report said land for taxation," or "refused to pay

any taxes thereon," and avers that he and those under whom he claims have been always willing to pay any taxes that were lawfully chargeable against them, and this defendant has made strenuous and continuous effort for more than eight years past to pay any taxes that were chargeable, and has been prevented therefrom only by the equally persistent efforts of the said Campbell and his associates and confederates and allies who have hoped and are now striving to acquire title to this defendant's land by virtue of the nonpayment of taxes thereon which he has been trying to pay and they to prevent him from paying.

XXV.

This defendant denies that he and his grantors have contributed in the way of taxes, "comparatively speaking, but a small pittance for the maintenance of peace and good order," and avers that, as compared with the said Campbell and his co-complainants and those under whom they claim the grantors of this defendant, although they were non residents and never added a farthings cost to the government of the State, and although they derived not one farthings income or profit from said land nor any profit or protection from said State, but only spoilation by it and its officers who, while accepting taxes from this defendant's grantors and acknowledging their title, were attempting to grant and sell the same away from them, paid large sums—

page 38.] thousands of dollars—in taxes "for the maintenance of peace and good order" among the persons under whom said Campbell and his co-complainants claim, long before the latter had paid any taxes on the land now in controversy, and when they were paying little or nothing at all towards the support of the government of their own state and county.

XXVI.

This defendant denies that he has or that those under whom he claims have ever abandoned said land or their title or claim of title thereto, or refused to pay taxes thereon, or reduce said land to possession, and avers that he and his grantees have always been willing to pay their taxes on said land and have heretofore paid

more than were lawfully chargeable thereon, and have long been endeavoring to pay more and to reduce said land to possession and have reduced the same to possession to a great extent, and have always been active in the assertion of their title; but were this otherwise this defendant has not in this cause, asked anything of the said Campbell or his co-complainants or any relief against them, but is simply offering to pay such taxes as may be chargeable upon his land, against which offer this defendant is advised that it is not competent for said Campbell and his associates to urge the objection of staleness of claim or any other objection.

XXVII.

And this defendant by way of further answer unto the said bill of the said Campbell and his co-complainants, and further showing why they are not entitled to any relief against this defendant doth further say:

That this defendant is the legal and equitable owner of all the land described in his said amended petition, including all the land embraced in the several tracts mentioned in said bill of said Campbell, et als., except such interests therein as this defendant heretofore conveyed to said Harvey, Miller, Altizer and Nighbert, and derives title thereto in the manner set out and shown in this defendant's answer to the bill and amended bills of the State filed herein, to which answer reference is hereby made and

page 39.] all the allegations of which concerning the derivation of title are hereby adopted and made part hereof.

XXVIII.

That said Morris grant contains within the boundaries thereof as surveyed by said W. D. Sell and established by said decree of September 30th, 1897, only about 415,000 acres of land, but the said grant was entered upon the land books of Virginia for the proper counties at 500,000 acres from 1796 to 1811 inclusive and the taxes thereon for those years paid by said James Swan. For those years the taxes were high, but for the subsequent time up to 1838, when the title to said land was vested in Dumas, trustee, by the act aforesaid, during which time the title became vested in

said Literary Fund, the taxes were trifling and the amount remitted by said act little more than two hundred dollars. After the passage of said act the said 500,000 acres was charged upon the land books of Russell county up to and including the year 1843, and in 1847 was entered upon the land books of Logan county in parcels of 200,000 acres and 300,000 acres and charged with the back taxes for 1844, 1845 and 1846, all which taxes were paid. Said land continued upon the land books of said county up to 1859 when said 300,000 was transferred and entered upon the land books of McDowell county and was there charged with taxes up to and including the year 1869, but how long the remaining 200,000 acres continued upon the land books of said Logan county this defendant is unable to state because of loss of such books for several years after 1859, but the taxes on said land were paid by redemption in 1855, and this defendant believes and avers that all the taxes thereafter up to and subsequent to the formation of the State of West Virginia were paid. See certificates of the Auditor, No. 1 to No. 7 filed herein.

XXIX.

That after the formation of said State of West Virginia and in 1869 the said Robert E. Randall, trustee, caused said 200,000 acres of said Morris grant to be entered upon the land books of Wyoming county and the heirs of said Maupertuis at the same time caused said 300,000 acres thereof to be entered upon the same books in their name. See Auditor's certificate No. 8," filed herewith and made part hereof. In 1873 said Anthony Lawson caused the interest he claimed to be entered upon the land books of Logan county and charged with taxes back to 1865 at 375,000 acres, upon which amount he paid taxes for thirteen years before the same was reduced to 100,000 acres. There was about 300,000 acres of said Morris grant situate in said State and this defendant's non resident tax dodging grantors were "contributing to the maintenance of peace and good order" among the complainants Campbell and his associates and

page 40.]

their grantors taxes on 875,000 acres of it—575,000 acres more than lay in the state.

XXX.

That in 1873 said 300,000 acres was sold to the State for the delinquent taxes previously assessed thereon, and on the 6th. day of April, 1874, and within one year after such sale the same was redeemed by Randall, trustee, by paying to the Auditor the sum of $8,434.15. See certificate of redemption No. 10, filed herewith, and the same having been again sold to the State for the taxes thereafter assessed, and said 200,000 acres having also been sold, the commissioner of school lands instituted the proceeding heretofore mentioned in the circuit court of said Wyoming county in which proceeding said Randall, trustee, as the owner of 200,000 acres of said tract and mortgage of 300,000 acres thereof was upon his petition permitted to redeem the same, which he did on the 10th day of April, 1883, by the payment of $8,000 00 into court, that being adjudged to be the amount of taxes, interest and costs due thereon under the said claim of Randall and Maupertuis, and the said court that day entered its decree declaring that the same was by him redeemed, and all title of the said State thereto released and said land exonerated from back taxes. A copy of said decree marked "Redemption 1883," is filed herewith and made part hereof. The said Lawson and his successors in interest, claimants of part of said Morris grant, and under whom this defendant claims, having at the time paid to the State more taxes than the State was entitled to demand upon said grant, the said

page 41.] Randall, by said two payments alone, made a gratuity of $16,434.16 to said State towards keeping peace and order among the complainants and their grantors.

XXXI.

That said decree directed the clerk of said circuit court to certify a copy of said decree to the Auditor of said State and also to the assessor of the proper assessment districts, in order that the said land be again charged with taxes, and the said clerk did certify said decree to said Auditor on or about the 16th day of June, 1883,

but whether he certified the same to the assessor or not this defendant is not informed, but he is advised that it is immaterial whether he did so or not, as the assessors were not at that time charged with the duty of entering land on the land books and had no authority to do so. This defendant is advised that it was also the statutory duty of the clerk of said court to certify to the clerks of the county courts of said Wyoming, Logan and McDowell counties copies or abstracts of said decree, and of the Auditor, to whom said decree was certified by the clerk of said circuit court as aforesaid, also to notify the said clerks of said county courts of the said decree, in order that the said clerks, who were the legal custodians of the land books of their said counties, should re-enter said land upon the said land books and charge the same with taxes, as they were required by law to do, the performance of any or all which duties the said Randall, trustee, could neither compel, aid nor prevent; and if any of said duties vere not performed and said land not re-entered upon the land books and charged with taxes, such failure and omission was the fault and through the default and neglect of the said State of West Virginia and her officers and agents charged with the duties aforesaid, and chosen to perform those duties in part by the said complainants, Campbell and his associates, and those under whom they claim, and in whose choice or election this defendant and those under whom he claims had no voice or part, and who did all that was reasonably in their power to have said land re-entered and *and* charged with taxes
page 42.] and who were always willing to pay any taxes lawfully chargeable upon said land; wherefore, as this defendant is advised, no claim of forfeiture of said land can be maintained by or on behalf of said State or of said complainants.

XXXII.

That this defendant is advised and charges that no report of the alleged omission of said land from the land books as made to the Auditor of said State, with all or any of the facts in relation thereto, as is required by statute, nor was any such report filed in the office of the said auditor, nor recorded in any book kept by

him, nor has the auditor at any time certified the said land to the commissioner of school lands of either of said counties, nor has any commissioner of school lands of any county certified the same to the circuit court of such county in the manner provided by law, nor have any of the acts and things required by law of the various State or county officers, in order to constitute a forfeiture under the terms of the statute, been done or observed, nor has any record of such omission of said lands from the land books or any judicial determination of or inquiry into the matter ever been made, nor any forfeiture ever been adjudged, determined or declared by any tribunal or any proceeding for the purpose.

XXXIII.

That the Auditor of said State is required by statute to keep in his office a record of all forfeited real estate that shall come to his knowledge, in which shall be shown the name of the former owner, or supposed owner of such land, the quantity, or supposed quantity, or other description thereof, for what years the owner was not charged with taxes and when the real estate became forfeited, and said statute makes it the duty of the clerks of the county courts of the various counties, and who are the custodians of the land books, to certify to the Auditor the omission of lands from the land books, and defendant avers that such a record is, and ever since the year 1883 and long prior thereto, has been kept by said Auditor as so required of him by law, and that there is no entry or mention of or reference to the said land claimed by this defendant or any part thereof, upon said record nor in the office of the said Auditor, nor is there any record of forfeiture, or pretended forfeiture, of said land, or any part thereof, since 1883, in any office or place, nor does the said land appear upon said Auditor's record of delinquent lands, as will appear from Auditor's certificate "H. C. K. 18," filed herein. And, defendant says that the object of such record is, among other things, to afford notice to the world of the lands forfeiture or claimed by said State as a forfeiture and to warn purchasers and encumbrancers of the claims of said State, and defen-

page 43.]

dant says that the said State, and all persons claiming under it, are bound and estopped by said record; and defendant further says that when he purchased said land he did so in good faith and for a valuable consideration, equal to more than three hundred thousand dollars, and in total ignorance and without notice or suspicion that said land, or any part thereof, or any interest therein, was claimed or alleged or supposed or pretended to be forfeited, but believing that he acquired by his said purchase a perfect, complete and indefeasible, legal and equitable title thereto, and to all thereof, except such parts as might have been lost by adverse possession under the statute of limitations, relying upon the fact that the said land for a long time had been a trust estate under the control of said courts, and had been but a short time before defendant's purchase sold by their orders to defendant's grantor, and relying also upon the failure of the public records to disclose any defect in the title of defendant's grantors to said land; and as soon as defendant discovered that said land was claimed to be forfeited he made every effort and offer and has been at all times willing and able to pay and settle with said State and her officers for any taxes, if any, that should be or ought to have been charged against said land and paid by him or his predecessors.

page 44.] XXXIV.

XXXIV. That in 1893, the said State of West Virginia brought a suit in the circuit court for Logan county, entitled State of West Virginia vs. LeMoyne, et als. for the purpose of subjecting said 500,000 acre grant to sale as forfeited, (See page 100 of the printed record on appeal). John A. Sheppard, Esq., appearing for the State, but representing in fact as this defendant believes, the interests of sundry of the persons named in the "fifth amended bill" herein, and this defendant appeared by his counsel and avowed his desire and purpose to pay any taxes that might be chargeable upon said land, and be relieved from all claim of forfeiture, whereupon, in order, as this defendant believes and charges, to prevent the payment of said taxes the said State caused said suit to be dismissed (page 116

of printed record), but later upon the discovery by her said counsel that the above entitled suit had subsequently been brought in another court and under the control of other counsel, the said Sheppard caused the said suit in Logan county to be reinstated upon the docket (page 117 of printed record), and at the next ensuing term of said circuit court in Wyoming county came into said court and endeavored to procure a dismissal of said cause.

XXXV.

That with the said Sheppard came the said C. W. Campbell, complainant herein, and sundry others, but not as counsel for said State or of any person named in the bill of the State or in the process thereon, and exhibiting to said court the record of said cause of State vs. LeMoyne, earnestly argued and insisted to said court that said court was without jurisdiction of said cause and of said land, because of the prior institution of State vs. LeMoyne, and endeavored to have said cause dismissed, with the view of preventing redemption by this defendant, and did succeed in preventing any action at that term. And this defendant is informed believes and avers that said Sheppard was at that time the counsel of certain of the persons under whom said Campbell and his co-complainants now claim and was then acting in their interest and the said Campbell and

page 45.] sheppard were in attendance upon said case in said court at sundry succeeding terms and endeavoring to shape the cause of proceedings therein so as to defeat or embarrass any action favorable to this defendant or unfavorable to their interests, and to induce such action as would be favorable and advantageous to them and to their interests.

XXXVI.

That after the final decree was entered in said cause on the 30th. day of September, 1897, no appeal therefrom having been taken or prayed or other complaint concerning the same ..ing been made for more than a year by the State, through her counsel who had brought said suit and conducted the same to conclusion, and who alone, according to universal usage and practice, should have applied for appeal, if appeal by the State was

to be taken, these complainants and others who claimed similar interest adversely to this defendant procured a transcript of the record of said cause from said circuit court of Wyoming county, and procured the then Attorney General, Edgar P. Rucker, who represented and now represents sundry persons and corporations mentioned in said "fifth amended bill" to lend them his official name and sanction and personal aid in securing an appeal in the name of the State from said decree; and the said complainants by their counsel, as this defendant is informed, believes and charges, drafted the petition for appeal to which said attorney general's name is appended, and presented said record and petition and secured appeal from said decree, and upon the hearing and re-hearing thereof the complaint Campbell and other counsel of these complainants and of said other persons, corporations and interests filed printed arguments in opposition to this defendant, the only person appearing as appellee, and in opposition to said decree and in effort to secure a reversal thereof, and the law partner of said Campbell, and counsel for these complainants participated in the oral argument of said cause with the like purpose; and this defendant avers that although said briefs were filed and arguments made by said counsel ostensibly

page 46.] on behalf of the State, with the exception of the attorney general they were not employed by and did not in reality represent or have any connection with or interest in the said State, the nominal appellant, but in reality represented these complainants and other private interests only; and while upon the first hearing the said Campbell and his law partners gave recognition to the nominal connection of the attorney general with the case to the extent of signing his name with their own to their briefs and of permitting him to make a short oral argument, chiefly of a personal nature and explanatory character in defense of his right to take part in the case at all, upon the rehearing the pretense that the State was the real appellant was abandoned and this scant recognition of the attorney gen-

eral was not accorded him, his name being dropped from all the briefs filed in the nominal behalf of the State.

XXXVII.

That this defendant is informed and believes and charges that these complainants and the other persons combined with them against this defendant paid or caused to be paid the fees, costs and charges of securing said record from the circuit court and of printing the same and the cost of publishing the citation upon said appeal and the other expenses of said appeal.

XXXVIII.

That after said cause had been reheard upon said appeal and the court had announced its decision the counsel for this defendant, together with the said attorney general at their request, considered with the said court the nature of the decree to be entered therein, and the court having drawn such decree as they deemed proper the same was entered, the said attorney general having first seen and approved of said decree, as this defendant is informed and believes; but the terms of said decree becoming known to these complainants and being unsatisfactory to them, they sought out the judges of said court, as this defendant is informed, believes and avers and attempted in vain to have the said decree so modified as not to affirm said decree of September 30th, 1897 of the circuit court in any respect.

page 47.] XXXIX

That upon the remanding of said cause by said supreme court of appeals to the circuit court of Wyoming county said Campbell and his co-complainants and the counsel for said other persons since mentioned in said "fifth amended bill", took charge of the same and supervised all the proceedings therein until the same was removed to Logan County, up to which time none of them had appeared as a party on the record; but upon the docketing of said cause in said Logan county, coming to the conclusion, as this defendant is advised, that under said decree and mandate they could no longer successfully obstruct this defendant in his long continued effort to adjust and settle the said mat-

ter of taxes with said State, unless they became parties in name as well as participants in fact, and hoping to escape the legal effect of their previous connection with said case and of the adjudications therein which they believed they could not escape if upon their own undisguised application they made themselves parties upon the record of said cause, they conceived the plan of getting into the record in the disguise and false appearance of involuntary defendants, in pursuance of which plan and purpose they induced the counsel for the State to submit to the court the question whether the State should be directed to file an amended bill making them parties to the said cause.

XL.

That the said State by her said attorney declared that she did not ask leave to file any amended bill nor move that she be required to take any action concerning same or concerning said persons, and this defendant, wishing not to be further delayed in the adjustment of said taxes, objected and protested against the filing of any amended bill bringing in either new or old parties, whereupon the complainant Campbell and other of said complainants and the counsel of the other persons mentioned in said "fifth amended bill" came forward and argued and strenuously insisted to the court that such amended bill be ordered to be filed, declaring that they represented the persons proposed to

page 48.] be made parties thereto, and the court, yielding to their request, ordered that the State file such an amended bill, and the said bill having been previously made ready and being then in the hands of said persons was immediately presented and filed. This defendant, by his counsel, requested that the order requiring said amended bill to be filed show that it was done upon the motion and request of these complainants and the other persons named therein, and presented to the court the draft of such order, but upon the objection of said persons and their counsel to the disclosure by the record that they had requested that such bill be filed, that portion of said order was by

direction of the court stricken out and the residue entered as the order of the court.

XLI.

That this defendant is informed by the counsel for said State and believes and charges that the data and material for said "fifth amended bill' so called, was collected and prepared and said bill drawn by the said complainant Campbell and his associates representing the new parties to said bill, and furnished to the said counsel for said State who, after eliminating therefrom a mass of matter attacking this defendant which said counsel for the State would not tolerate, adopted same as the proposed amended bill; and this defendant says that the said paper, as it was presented and filed, had been examined by the said Campbell and the other persons aforesaid before they urged the filing of an amended bill and was in their hands in court at the time. And this defendant avers that the whole authorship of said so called amended bill, which states no cause of complaint or ground of relief against any person, and was designed solely to enable the persons therein mentioned to come into the case, belongs exclusively to said persons and their counsel, and not in any degree to the said State or her counsel.

XLII.

That this defendant is informed by the sheriff of said Logan county that the said Campbell advanced and paid to him the said sheriff, the fees, costs and charges for serving upon the said Campbell and the other persons named in said

page 49.] "fifth amended bill' the process issued thereon; and this defendant further charges that the said costs and the costs of printing said process and all the costs that have been paid in and about said case since the remanding of said cause by the said Supreme Court of Appeals have been contributed and paid by these complainants and the other persons who have filed so called answers to said "fifth amended bill", or by some of them.

XLIII.

That after the filing of said "fifth amended bill' and again

after the filing of the bill of these complainants, and sundry other like bills misnamed answers to said "fifth amended bill" by some of the persons therein named, this defendant, still striving to be free from the hindrance of said several intervening complainants to the settlement of said question of taxes, applied to the said Supreme Court of Appeals to prohibit this court from entertaining the controversies sought to be raised between said persons and this defendant, whereupon these complainants and the other persons who had been named in said "fifth amended bill" rushed into said Supreme Court of Appeals with a stupendous array of counsel to keep from being dismissed out of said case and to keep this defendant from having the taxes claimed of him by the State speedily ascertained and paid.

XLIV.

And this defendant is advised and doth and will maintain that the said Campbel and his co-complainants, having concerned themselves with said cause in the first instance, objecting to the jurisdiction of the court, having procured and presented an appeal from said decree of September 30th, 1897, at their own instance and at their own expense, and having succeeded in part and in part having failed to secure a reversal thereof, and having by their own voluntary expense procured themselves to be made parties in the name to said cause, they are bound and concluded by said decree of September 30th, 1897,
page 50.] so far as the same was affirmed by the decree of said Supreme Court of Appeals, and are bound by said latter decree, and are estopped from disputing or relitigating herein or elsewhere any question or matter either of law or fact that was or might have been *dtermined* directly or indirectly by said decrees or either of them or by said proceedings.

XLV.

And this defendant further says:

That the greater part of the lands claimed by said Campbell and his co-complainants are claimed by them by virtue of pretended sales by L. D. Chambers, commissioner of school lands of Logan county, all which were made through certain *ex parte*

non-judicial proceedings against said several parcels for the sale of the same as waste and unappropriated land, within the five years next succeeding the 10th, day of April, 1883, and the redemption of said land by said Randall, trustee, as aforesaid at which time the said land was not waste and unappropriated or forfeited or claimed to be forfeited or otherwise subject to sale by or on behalf of the State for any cause or in any manner whatever and said pretended sales and the deeds made in pursuance thereof were and are wholly void and give neither title nor color of title nor any right of any kind to the land by them described

XLVI.

That about 6,000 or 7,000 acres of said land now claimed by complainant Campbell and his co-complainants was sold as aforesaid by the said commissioner Chambers to himself and his wife, Margaret L. Chambers and their son James L. Chambers, for nominal prices aggregating a little more than five hundred dollars, about the cost such proceedings, from which sales the State, as this defendant is informed, never received a cent.

XLVII.

That not only was the said Chambers, although a public officer, in effect both seller and purchaser of said lands, but said sales were conducted, as this defendant is informed, believes and avers, in the most outrageously unfair and fraudulent manner, some of the details of which are mildly set

page 51.] forth in the bill brought in the name of the State to set aside said sales on account of such fraud which was so unusual as to shock the sence of fairness supposed to exist in the fraternity of land robbers, a copy of which bill is filed herewith marked "Exhibit, Bill against Chambers".

XLVIII.

That during the pendency of said suit M. B. Mullins, under whom said complainants claim, and for whom the said Campbell is trustee, as this defendant is informed, began negotiations for the purchase of said land from said Chambers, and finding said suit an embarrassment, procured the same to be dismissed by the payment of the sum of twelve hundred and fifty dollars to

the defendant Buskirk, successor of commissioner Chambers, or to the counsel appearing for the State, as this defendant is informed by said Mullins, none of which $1,250.00 ever found its way to the public treasury, as this defendant is informed and believes.

XLIX.

That the said complainants and each of them have acquired all their present claims of title long since the institution of the above entitled suit in the circuit court of Wyoming county and long since the filing of this defendant's answer thereto and with full notice and knowledge of all the facts therein set out and of the superiority of the title and rights of this defendant over those of the persons under whom they claim, and with full knowledge of the fraudulent character of some of the titles and the worthlessness of all the titles and claims acquired by them, and they are not bona fide purchasers, but are speculators upon the *hazzard* of the litigation which they have purchased upon the chances of defeating justice.

L.

This defendant in further denial of the allegations of said bill of said Campbell and his co-complainants, and in further defense against the same says:

That the title to said Morris grant under which this defendant claims is not forfeited or vested in the State of
page 52.] West Virginia or in the said complainants or in any other person but this defendant, except the portion thereof conveyed by this defendant as aforesaid; and this defendant is advised and doth claim and contend and will maintain that the provisions of the constitution of the State of West Virginia and of any statutes thereof which attempt by their own operation irredeemably to forfeit land for the non-assessment of taxes thereon for the period of five years or any other time, or which attempt or purport to transfer to any other person the title to such land, have no proper application to the land claimed by this defendant; but that if such provision or any of them do apply, by their terms, to the land claimed by this

defendant, so far said constitution and statutes of said State and as well the statute under which these proceedings is instituted, are in contravention of the Constitution of the United State and are null and void, and this defendant invokes the protection of, and relies upon, the said Constitution of the United States.

And this defendant further says that this court is without jurisdiction to entertain the said bill of said Campbell and his Co-complainants, or this proceeding.

Wherefore this defendant prays that the said bill of complaint of the said Campbell and his co-complainants be dismissed and that this defendant be hence dismissed with his costs.

HENRY C. KING
By Counsel.

MAYNARD F. STILES,
Solicitor.

——PETITION OF DINGESS RUM COAL COMPANY——

Filed before Commissioner Nov. 30, 1903.
Filed in Court July 27, 1904.

IN THE CIRCUIT COURT OF CABELL COUNTY.
STATE OF WEST VIRGINIA
vs. *In Chancery.*
HENRY C. KING, *et als.*

page 53.] Petition and answer of Dingess Rum Coal Company, Supplemental to an answer of its grantors, C. W. Campbell et als., filed herein on July 1, 1901.

To the Honorable E. S. Doolittle, Judge of said court.

The petitioner, the Dingess-Rum Coal Company, respectfully shows that it is a corporation created and organized in 1903, and existing under and by virtue of the laws of the State of West Virginia that on the first day of July, 1903, there was conveyed to it by deed, with covenants of general warranty, by C. W. Campbell, trustee, C. W. Campbell and wife, J. L. Caldwell and wife, John

Q. Dickenson and wife, Thomas H. Harvey and wife, George F. Miller and wife, and Vicie Nighbert, the following tracts of land, situate in the water-shed of Dingess Run, in Logan County, West Virginia, to-wit: 205 1-2, 448, 550, 148, 482, 85, 405, 358 1-2, 123, 497, 110, 198 3-4, 53, 290, 466 1-2, 209, 40, 360, 41, 372, 268, 233, 89, 428, 117, 500, 24, 30, 200, 100, 75, 8, 25 and 50 acres, the original of which deed is herewith exhibited as part of this answer, marked "Dingess-Rum Coal Co. No. 1."

That, on the same day, and by like deed, the same grantors conveyed to this petitioner the following tracts of land, situate on said Dingess Run, and adjoining some of the foregoing tracts, to-wit: 9, 18, 168, 120 and 146 acres. The last five

page 54.] tracts were regularly reported by the Surveyor of Logan County to the Commissioner of School Lands of that County as school lands, and the said commissioner of School Lands thereon reported the same to the Circuit Court of said Logan County as school lands, and liable to be sold for the benefit of the school fund of said State, that, on the 9th day of August, 1900, the said Circuit Court decreed the said lands to be sold for the benefit of the school fund. Said decree was made in the chancery cause of the State of West Virginia vs. John R. Reed, trustee, and under and by virtue of said decree said tracts of land were sold to the defendant, C. W. Campbell, Trustee, for $690.59, which sale was confirmed on the 24th day of October, 1900, and the purchase money having been paid according to the terms of the decree of sale, said lands were conveyed to said C. W. Campbell, trustee, by deed, bearing date the 10th day of July, 1902, as will appear by the original of said deed, herewith filed as part hereof, marked "Dingess-Rum Coal Co. No. 2."

That, on the same day, and by like deed, the same grantors conveyed to the petitioner four other tracts of 28, 48, 13 1-2 and 113 acres, situate on said Dingess Run, and adjoining the foregoing tracts. Said four tracts had been conveyed by John R. Reed, trustee, to C. W. Campbell, trustee, by deed dated September 20, 1899.

That, on the same day, and by like deed, the defendants, C. W. Campbell and wife, J. L. Caldwell and wife, and J. Q. Dickinson and wife, conveyed to this petitioner one-half undivided of thirty-

five acres, which is said to contain, by recent survey, forty-three acres, and also the minerals and mineral rights and privileges on the remaining undivided one-half, also eight acres, 462 1-2 acres, and 34-35 of 28 acres, as will appear by the original of said deed herewith exhibited as part of this answer, marked "Dingess-Rum Coal Co."

page 55.] That, on the same day, and by like deed, the said C. W. Campbell, trustee, C. W. Campbell and wife, J. L. Caldwell and wife, and John Q. Dickinson and wife conveyed to the petitioner all the lands known as the L. D. Chambers lands and heretofore specified in the answer of said C. W. Campbell et als., and also the following tracts of land, 480, 290, 997, 314 and 480 acres, the four first adjoining the Chambers' lands, and the last tract is situate on the water-shed of Buffalo Creek. Also all the minerals and mineral rights and privileges in the tract of 299 acres—the surface thereof having been conveyed to Joe Lowe. Also the minerals and mineral rights and privileges in a tract of 58 3-4 acres on a part of the 550 acres reserved by L. D. Chambers in his deed to C. W. Campbell, trustee, also the minerals and mineral rights and privileges in another portion of said reservation of 550 acres, containing 57 1-2 acres. The minerals in the 58 3-4 acres was conveyed to said C. W. Campbell, trustee, by Augusta Butcher and husband, on the 16th day of June, 1902, and the minerals in the 57 1-2 acres was conveyed to the said C. E. Campbell, trustee, by S. E. Chambers and wife, on the 23rd day of May, 1903, the original of said deeds will be exhibited herewith as part hereof, marked "Dingess-Rum Coal Co. No. 4," and "Dingess-Rum Coal Co. No. 5," respectively.

That, on the same day, and by like deed, the defendants, John Q. Dickinson and wife, conveyed to this petitioner the several tracts of land, and interests in lands, heretofore mentioned and described in the answer of the said John Q. Dickinson, the original of which deed is herewith exhibited as part hereof, marked "Dingess-Rum Coal Co. No. 6."

That, on the 3rd day of August, 1903, Mary Ann Lawson, by one deed, Isaac Lawson and wife, Wallace W. Lawson and wife, Matilda Lawson and Lula Hogue, by another deed, and Nellie F. Ferguson and husband, by another deed, granted and conveyed

to C. W. Campbell, in trust for the petitioner, three tracts of 50, 14 and 21 acres, which are described in the deed made by J. M. Lawson to Mary Ann Lawson, bearing date the 30th day of October, 1871, and recorded in Deed Book "G," page 409, of the records of Logan County.

That, on the first day of October, 1903, for the consideration of $1500, cash in hand paid, Sarah Y. Dingess conveyed to the petitioner the undivided interest and share she held in about 1960 acres of land, conveyed to defendant John Q. Dickinson by Patterson Dingess and wife, et als., on the 30th day of March, 1899, the same being the interest she acquired from A. S. Bryan by deed bearing date the 11th day of June, 1901, he being the father and heir of a deceased insane son, who was a child and heir of a sister of Z. C. Dingess, deceased. The petitioner is now seized of 42-43, instead of 5-6 of said tract of land.

page 56.]

That, by deed hereinbefore exhibited from C. W. Campbell, trustee, et als., there was conveyed to this petitioner 462 1-2 acres, situate on the Lawson Branch and on the river mountain, at and below the mouth of Dingess Run, which tract had previously been conveyed to C. W. Campbell, trustee, by Floyd S. Stollings and wife, by deed, bearing date the 20th day of November, 1900. The consideration paid therefor was $925.00.

That, by deed dated the sixth day of August, 1903, Margaret Hinchman and husband, for the consideration of $3,000, conveyed to C. W. Campbell, in trust for petitioner, a tract of 74 acres of land, on the Guyandotte River, and the river mountain, lying immediately above the mouth of Dingess Run, and adjoining the lands hereinbefore mentioned, as will appear by the original of said deed, herewith exhibited as part hereof marked "Dingess-Rum Coal Co. No. 7."

That, there was also conveyed to this petitioner by grantors aforesaid, on the first day of July, 1903, a tract of eight acres of land, situate on and across Dingess Run Creek, and which had been conveyed to the said C. W. Campbell by Sarah A. Stone and husband, by deed bearing date the 11th day of June, 1900. Said parcel of land is carved out of the lands which the defendant,

Henry C. King, has excluded from the lands which he desires to redeem.

That, on the 28th day of September, 1903, Joseph A. Peck, widower, for $3,000, cash in hand, paid, conveyed to this petitioner tracts of 440, 661 and 1216 3-4 acres, situate on

page 57.] the northerly side of Rum Creek, in Logan County, West Virginia, and adjoining the lands on Dingess Run hereinbefore mentioned. Said three tracts of land had been surveyed by the County Surveyor of Logan County, and reported by him to the Commissioner of School Lands as liable to sale for the benefit of the school fund, and the Commissioner of School Lands had reported the same to the Circuit Court of said County, and by virtue of certain proceedings had in said Court, pursuant to the Statute made and provided in such cases, said lands were offered for sale under said proceedings on the 5th day of October, 1885, and were purchased for a consideration of $310, and were afterwards, on the 17th day of October, 1887, conveyed by the State of West Virginia to A. C. Chambers and Joseph A. Peck. The interest of said A. C. Chambers in said tracts of land was conveyed to said J. A. Peck by H. C. Ragland, Special Commissioner, by deed dated the 10th day of April, 1888, by virtue of the decrees of the Circuit Court of Logan County, made in the cause in which J. A. Peck was plaintiff, and A. C. Chambers and L. D. Chambers, Commissioner of School Lands, and R. M. French were defendants. The original of said deed is herewith exhibited, as well as the original deed from the State of West Virginia to A. C. Chambers and J. A. Peck, marked "Dingess-Rum Coal Co, No. 8, and "Dingess Rum Coal Co. No. 9," respectively. Said tract of land was immediately entered upon the land books of said Logan County and all taxes charged or chargeable thereon since that date have been regularly paid.

This petitioner is informed, believes and charges that no part of any of said lands are within, or constitute any part of, the

Robert Morris tract, described as containing 500,000 acres of land, mentioned and described in the bill. This petitioner refers to the answer of said C. W. Campbell, J. L. Caldwell, John Q. Dickinson, George F. Miller, S. S. Altizer, Thomas H. Harvey and Vicie Nighbert heretofore filed in said cause, and it adopts and reiterates the allegations and averments therein set forth, and now says the same are true.

[page 58.]

This petitioner further avers that if the following tracts of land be within and constitute a part of the said Morris grant still the State of West Virginia has no title, claim or interest therein, because she conveyed the same to Z. C. Dingess, under whom this petitioner now holds, and the said Henry C. King has no right, title or interest therein, because he is precluded and estopped by that certain decree and adjudication of the Circuit Court of the United States for the then District of West Virginia, in a certain cause instituted and pending in said Court, wherein John R. Reed, trustee, was the plaintiff, and the said Zatto C. Dingess was defendant. Said decree was pronounced and entered by said Court in said cause on the 19th day of May, 1893, and was afterwards affirmed by the United States Circuit Court of Appeals on an appeal from said decree prosecuted in said Court by the said John R. Reed, trustee. The tracts of land last referred to are as follows, 148, 497, 123, 233, 550, 405, 41, 372, 428, 268, 466½, 200, 110, 205, 358½, 482, 448, 198¾ and 360 acres, particularly mentioned and described in the Record of said cause hereinafter exhibited.

The petitioner avers that the said John R. Reed, trustee, on the 11th day of September, 1890, exhibited his original bill against Z. C. Dingess in said Circuit Court, and, on the 23rd day of May, 1892, exhibited an amended bill of complaint against said Zatto C. Dingess, wherein he alleged, in substance that the Commonwealth of Virginia, by letters patent, bearing date the 21st day of January, 1796, granted to William McClery a tract of land, containing 100,000 acres, by survey dated 21st day of May, 1795, lying on the waters of Cole River, Sandy, Tug and

Guyandotte Rivers. The metes and bounds of said tract were set forth in said bill. He further alleged that on
page 59.] the 22nd day of January, 1796, the said William McClery conveyed said lands to James Swan. He further alleged that under and by virtue of the several Acts of the Commonwealth of Virginia, the title to said tract of land became vested in the president and directors of the literary fund, by reason of forfeiture, and, in support of said allegation, he filed a certificate of the Auditor of Public Accounts of Virginia as an exhibit with said bill. He then alleged that on the 15th day of March, 1838, such forfeiture was in force, and that the General Assembly of the Commonwealth and of the President and directors of the literary fund in and to said tract of land so acquired by such forfeiture was transferred to and vested in one John Peter Dumas, in trust, discharged from all taxes and damages charged or chargeable thereon, before the first day of January, 1838. A copy of said Act was exhibited with said bill. He then averred that the said John Peter Dumas entered upon the discharge of his duties as trustee, under and by virtue of said appointment, and continued to hold and manage said estate of said James Swan so vested in him until his death, which occurred on or about the 2nd day of December, 1847, that after his death one Josiah Randall was appointed trustee by the Circuit Court of Kanawha County to succeed said Dumas, with all the powers vested in the latter by the Act of Assembly, that said Randall departed this life in 1866, and thereupon, in the same year, Robert E. Randall was appointed as trustee in the room and stead of said Josiah Randall, that the latter held the position as trustee until the ..... day of ....., 1886, when he resigned, and the said John R. Reed, the plaintiff, was appointed in his room and stead, that said tract of 100,000 acres had not, nor had any part of the same, been charged on the land books of either Logan or Boone Counties, either to the said Dumas, Josiah or Robert E. Randall, or to the plaintiff, John R. Reed, since the organization of the State of West Virginia, and that, by reason of such failure to cause said land to be *charge* on the

books of either Logan or Boone Counties, the same became liable to be sold by the Commissioner of School Lands of
page 60.] Logan County for the benefit of the school fund, that the Commissioner of School Lands of the said County, during the years 1882 and 1888, made the sales of parts of said 100,000 acres to the said Zatto C. Dingess, as waste and unappropriated lands. The said John R. Reed then averred in detail the several proceedings of the Commissioner of School Lands of Logan County whereby the tracts of land last above mentioned were sold and conveyed to the said Zatto C. Dingess. Copies of the several conveyances to the said Zatto C. Dingess were exhibited with and made part of said bills, as were also copies of decrees directing said sales. And the said John R. Reed, in said original bill, prayed that the said Zatto C. Dingess might be made a party defendant to said bill of complaint, that due process be issued against him, requiring him to appear in said Court and answer all and singular the premises, and that the said several deeds therein set forth might be annulled and set aside, and the said John R. Reed be permitted to redeem said several tracts of land, and for such other and further relief as the Court should think meet. And in said amended bill he repeated the same prayer, and further prayed that he be put in possession of said property. Said Zatto C. Dingess appeared to the said original and amended bills, and demurred to the same on divers and sundry grounds, and the said Circuit Court of the United States for the then District of West Virginia, after argument of counsel, was of the opinion that the law arising upon said demurrer was for the said Zatto C. Dingess, and thereupon pronounced and entered a decree on the 19th day of May, 1893, whereby it was ordered, adjudged and decreed that the complainant's bill and amended bill be, and the same were, dismissed, and that the defendant recover of the complainant his cost about his defence in that behalf expended. The said John R. Reed thereupon prosecuted an appeal to said decree from the United States Circuit Court of Appeals for the Fourth Circuit, and that affirmed the decree aforesaid of the Circuit

Court, and said Decree so made and affirmed still remains in force and virtue.

A *transcrip* of the record of said decree and of all
page 61.] proceedings therein, and of said appeal and affirmance, is herewith exhibited as part of this answer.

This petitioner *claimes* and holds said several tracts of land under the deeds mentioned in said bill, and which the said John R. Reed therein prayed to be annulled and set aside.

Said John R. Reed, trustee, at the date of the institution of said suit, claimed to own the land embraced in the McClery 100,000, acre survey and in the Robert Morris 500,000 acre survey, under and by virtue of the Act of Assembly of Virginia passed on the 15th day of March, 1838, as a source and beginning of his title, and whether the several tracts of land last above mentioned were a part of the one or the other, or of both of said surveys of 100,000 and 500,000 acres, the said John R. Reed had no other title thereto than such title as was vested in John Peter Dumas under the Act of Assembly aforesaid, and in the said suit John R. Reed set forth his title to said parcels of land under and by virtue of said Act of Assembly, and it was adjudged that the said John R. Reed, trustee, was not entitled to any estate, right or title to said parcels of land, or any of them. It was during the pendency of this suit that the said John R. Reed trustee, bargained and sold to David W. Armstrong the Robert Morris tract, to-wit, by contract of sale, dated the 10th day of June, 1891, and confirmed on the 20th day of August, 1891, and the 10th day of September, 1819, by the Courts wherein certain causes were pending, that the said John R. Reed, trustee, David W. Armstrong joining therein, on the 29th day of September, 1891, made a deed to John V. LeMoyne, purporting to convey to the latter the said Robert Morris tract of land and interest therein which had theretofore been conveyed by Robert E. Randall trustee, the predecessor of the said John R. Reed, trustee, to Christian F. Smith and R. J. Fougeray, trustees, by deed dated October 10, 1885, supposed to contain 13,000 acres, also to

Christian F. Smith, trustee, by deed dated October 10, 1885, supposed to contain 3,000 acres, and also to Samuel Baugh, by deed dated October 10, 1885, supposed to contain 1,000 acres, also "any interlock that may exist between said 500,000 acres of land hereby conveyed and another certain tract of land belonging to said Reed, trustee, as aforesaid, containing 100,000 acres, patented to William McClery by the Commonwealth of Virginia on the 21st day of January, 1796. It is not thought that any such interlock exists, but, if, by a proper running of the lines of said two surveys, it shall appear that they conflict, such interlock is not intended to be, and is not, hereby conveyed. All of which will appear by copy of said deed filed in this cause.

[page 62.]

This petitioner is therefore advised that the said Henry C. King, being a penente lite purchaser, if said tracts of land be within the lines of the Robert Morris survey, is bound, precluded and estopped by the final decree and adjudication in the cause aforesaid, and this petitioner, now holding and claiming said tracts of land under the Zatto C. Dingess, defendant to said cause, pleads and relies upon said decree as an estoppel, and a final adjudication binding upon the said Henry C. King.

This petitioner avers that the said John R. Reed trustee, the plaintiff in the cause against the said Zatto C. Dingess aforesaid, is the same John R. Reed, trustee, under whom the said Henry C. King now claims the nineteen tracts of land on Dingess Run aforesaid, that the said Zatto C. Dingess under whom this petitioner claims and holds the nineteen tracts of land aforesaid, so claimed by this petitioner under the said Zatto C. Dingess, are the same identical tracts of land, and none other, which were mentioned and described in the original and amended bill in the cause aforesaid of John R. Reed trustee, v. Zatto C. Dingess, and the several deeds mentioned and described in said bills, copies of which were exhibited therewith as part thereof, are the same deeds through and by which this petitioner claims and holds the said tracts of land.

WITNESS the signature of J. L. Caldwell, President of this

petitioner, and witness also the corporate seal of this petitioner.

page 63.] J. L. CALDWELL,
President, Dingess-Rum Coal Company.

DINGESS-RUM COAL COMPANY.
HUNTINGTON, W. VA.
SEAL

ATTEST: C. W. CAMPBELL,
Secretary.

page 64.] Exhibited with Petition of Dingess Rum Coal Co.

REDEMPTION OF MULLINS LAND.

At a Circuit Court continued and held for Logan County, at the Court House thereof, on Monday the 23rd day of October, 1899, a decree was made and entered in Chancery Order Book "G", page 403, in words and figures following, to-wit:

State of West Virginia.
vs.) *In Chancery.*
L. D. Hill et al
M. B. Mullins,
L. D. Chambers included.

This day came the State by her attorney and thereupon came C. W. CAMPBELL, trustee in his own proper person, and by leave of the Court filed his petition praying to be allowed to pay the unpaid taxes on the tract of 7521 acres of land on Rum Creek and described in the bill as containing 7929 acres and alleged to have been forfeited in the name of M. B. Mullins, and now this day said cause came on to be heard upon the bill and exhibits, the report of Comr. Brazie filed Oct. 19th 1899 and the petition of C. W. Campbell *traustee* and on consideration whereof and it appearing that C. W. Campbell, trustee is the assignee and grantee of L. D. Chambers who was the assignee and grantee of M. B. Mullins by J. B. Wilkinson Spl. Comr. of said land and that he has a right to pay the unpaid taxes thereon as reported

by Comr. Brazie to-wit: $1593.61 and thereby redeemed the same from the alleged forfeiture and it appearing that said C. W. Campbell, trustee, has this day and in open Court paid to J. E. Hinchman the Comr. of School Lands of this County the sum of 1593.61 in full taxes charged or chargeable
page 65.] on said tract of 7929 acres reduced to 7521 acres to and including the year 1899 and also $17.95 covering all costs taxed against said tract it is therefore adjudged, ordered and decreed that said tract of land stand redeemed and released from the alleged forfeiture and *exhonerated* from all taxes charged or chargeable on same for the year 1896, 1897 1898 and 1899. Said Comr. of School Lands is directed to disburse said money under orders of this court. He shall pay the Clerk of this Court $3.25, the Sheriff $1.50; Comr. Brazie $2.25; for printing 95c; and take receipts for each of the foregoing disbursements and the Clerk of County Court is directed to enter said land on the land books for the year 1900.

A Copy,

Teste: SCOTT JUSTICE, *Clerk.*

page 66.] DEMURRER AND ANSWER OF KING TO PETITION OF DINGESS RUM COAL COMPANY.

(Filed in Court June, 27, *1915*)

IN THE CIRCUIT COURT OF WEST VIRGINIA FOR THE COUNTY OF MARION.

State of West Virginia
vs.) *In Chancery.*
Henry C. King et als.

DEMURRER AND ANSWER OF HENRY C. KING TO THE DOCUMENT FILED IN THE ABOVE ENTITLED CAUSE AND ENTITLED "PETITION AND ANSWER OF DINGESS-RUM COAL COMPANY, SUPPLEMENTAL TO AN ANSWER OF ITS GRANTORS, C. W. CAMPBELL, ET ALS FILED HEREIN ON JULY 1ST, 1901."

TO THE HONORABLE JOHN W. MASON, JUDGE OF SAID COURT:

Now comes HENRY C. KING defendant herein and *demurrs* to the so-called petition and answer of Dingess-Rum Coal Company and for cause of demurrer says that said petition does not allege any such facts or state any such case as to entitle said Dingess-Rum Coal Company to any relief herein.

And not waiving said demurrer but relying and insisting upon the same this defendant for answer thereto or to so much thereof as he is advised that it is material for him to answer says.

1. That this defendant admits that said Dingess-Rum Coal Company is a corporation and organized under the laws of the State of West Virginia in 1903.

2. That this defendant denies that there was conveyed to said Dingess-Rum coal Company on the first day of July, 1903, or at any other time by deed with covenants of general warranty, or

otherwise, by C. W. Campbell, trustee, C. W. Campbell and wife, J. L. Caldwell and wife, John Q. Dickinson and wife,
page 67.] Thomas H. Harvey and wife, George F. Miller and wife and Vicie Nighbert, or any of them, the tracts of land mentioned in said so-called petition and answer mentioned ,or any of them; but it may be true that the persons mentioned did execute a pretended deed, or attempt to convey to said Company the tracts of land mentioned, or some of them, but said pretended deed, if any such was executed, failed to convey to said Company any of said lands or any interest or any right therein.

3. That this defendant denies that any of the tracts referred to in said so-called petition and answer was regularly reported by the surveyor of Logan County to the commissioner of school lands of that county as school lands or that the said commissioner of school lands regularly reported the same to the Circuit Court of Logan County as school lands and liable to be sold for the benefit of the school fund of said State, and says that if any report or pretended report of said lands was made by either of said officers the same was irregular, unauthorized and unlawful.

4. That if the Circuit Court of Logan County entered any decree on the 9th day of August, 1909 in the cause of State of West Virginia vs. John R. Reed, trustee, for the sale of said lands or any part thereof for the benefit of the school fund, said decree was invalid and void, because said court had no jurisdiction, power or authority to enter or pronounce such decree, because this defendant was not a party to said suit, and because this defendant had previously been adjudged in this cause to be the owner of said land by title superior to that of all other claimants and said State had been adjudged not to be entitled to sell said land, which decree was at all times, and still is, binding upon the State of West Virginia.

5. That this defendant denies that said tracts of land or any of them were or was sold to C. W. Campbell, trustee, or that a

sale thereof was confirmed on the 24th day of October, 1900, or that said lands or any of them were conveyed to said

page 68.] C. W. Campbell, trustee, by deed of July 10, 1902 or at any other time. And this defendant says if any apparent or pretended decree of sale, sale or confirmation of sale or deed pretending or purporting to sell or convey said lands or any of them to said C. W. Campbell, trustee, was made, said decree or decrees and deed were and are null and void. And defendant further says that the said C. W. Campbell, trustee, on the 9th day of August, 1900, and for nearly three years prior thereto, and at all times thereafter, well knew that it had been adjudged and decreed herein as aforesaid, that said land was not legally subject to be sold by the State of West Virginia and that this defendant had title thereto superior to all other claimants and said purchase by said Campbell, if any was made by him, was made in bad faith and in attempted fraud of this defendnt's rights, and without any authority or right on the part of the State of West Virginia to sell the said land in said proceeding.

6. That C. W. Campbell, trustee, and others above mentioned, may have executed to said Dingess-Rum Coal Company a deed, purporting to convey to said Company four other tracts of 28, 48, 13¾ and 113 acres respectively, situate on Dingess Run, and John R. Reed, trustee, may have executed to said Campbell, trustee, on the 20th of September, 1899, a deed attempting to convey to him said several tracts, but this defendant is advised that no title or right passed by either of said deeds, the said John R. Reed, trustee, having on said September 20th, 1899, no right, authority or legal power to execute a deed for said lands.

7. That it may be true that the persons mentioned in said so-called petition and answer or some of them did attempt to execute to said Dingess-Rum Coal Company the various other pretended deeds referred to in said petition as marked "Dingess-Rum Coal Company" No. 3 to 7, and purporting to convey to

said Company various parcels of land, but this defendant says that if such deeds were executed, no title to the lands
page 69.| therein described passed thereby to the said Company, because no right or title was vested in said pretended grantors, or those under whom they claim, but this defendant was at the time said deeds were executed and prior thereto, and ever since, the real and true owner of the land which said deeds purport or attempt to convey to said Company.

8. That it may be true that what purports to be a deed for "8 acres of land situate on and across Dingess Run Creek" was executed to said corporation on the first day of July, 1903; and it may *be* also be true that what purports to be a deed attempting to convey said land to said corporation from Sarah A. Stone and husband on the 11th day of June, 1900 was also executed, but this defendant is advised and avers that no title to said land passed by either of said pretended deeds. This defendant does not personally know whether or not said 8 acres has been excluded by this defendant from the land claimed by him and for want of sufficient information to admit that said land has been so excluded, denies the same, and avers that the title to said land is paramount and superior in defendant if the same be included in his amended petition and answer herein.

9. That it may be true that Joseph A. Peck did on the 28th day of September, 1903, execute a paper of writing attempting to convey to said corporation tracts of 440, 661, and 1216¾ acres situate on the northern side of Rum Creek in said Logan County, but this defendant denies that said instrument of writing was effectual to pass any title or right to said lands or any interest therein. This defendant is not sufficiently informed to enable him to admit that said tracts of land were or that any of them was surveyed by the county surveyor of said county or reported by him to the commissioner of school lands of said county as subject to sale for the benefit of the school fund; or whether said commissioner of school lands reported the same to the circuit

court of said county, or whether said lands were offered for sale under proceedings had in the circuit court on the
page 70.] 5th day of October, 1885, or at any other time, and therefore denies the allegations of said so-called petition and answer of said corporation concerning the same; and, this defendant denies that the State of West Virginia on the 17th day of October, 1887, or at any other time conveyed said lands or either of them or any part thereof to A. C. Chambers and Joseph A. Peck or either or them, or that said State of West Virginia then had any right, title, ownership or interest in said land or any part thereof or that said State or any officer or agent thereof had any power or authority to execute any instrument attempting or purporting to convey the said land, and denies that the said court had any jurisdiction, authority or lawful power to sell, or order to be sold, said lands or any part thereof or otherwise to deal with the same. And this defendant says that if any deeds or writings of J. A. Peck or H. C. Raglan, special commissioner, or any of the persons mentioned in said answer, purported or attempted to convey said lands or any portion thereof, were made, said deeds and writings and each of them were and are ineffectual and void, and none of said persons had any right, title or interest in or lawful claim to any of said lands, but the said lands at the time of said deeds belonged to the grantors of this defendant in fee simple and now belong to this defendant.

10. That this defendant denies that said tracts of land were, or that either of them was, immediately entered upon the land books of Logan county after the pretended sales thereof, and denies that the taxes chargeable thereon have been regularly paid by any person or persons under whom the said Dingess-Rum Coal Company claims or pretends to claim.

11. That this defendant denies that the lands mentioned in said so called petition and answer of said Dingess-Rum Coal Company are not within or constitute any part of said Robert Morris 500,000 acre grant, and avers that each and every tract and

parcel of land mentioned in said so called petition and answer is part and parcel of said Robert Morris 500,000 acre
page 71.] grant and is *ourwid* and claimed by this defendant under his title as set out in his answer to the original and four amended bills of the State of West Virginia filed herein, to which reference is hereby made. And this defendant for further answer to said so called petition and answer of said Dingess-Rum Coal Co. refers to and makes part hereof his answer to the so called answer of C. W. Campbell in his own right and as trustee, J. L. Caldwell, and John Q. Dickinson, Thomas H. Harvey, George F. Miller, S. S. Altizer and Vicie Nighbert, and adopts all the allegations thereof as *fullly* and to the same effect as if the same were here reiterated and set forth at large.

12. That this defendant denies that the State of West Virginia ever conveyed to Z. C. Dingess the tracts of land mentioned in the so-called petition and answer of the Dingess-Rum Coal Co. to-wit: 148, 497, 123, 233, 550, 405, 41, 428, 268, 466½, 110, 205, 358½, 182, 448, 198¾ and 360 acres respectively or any of them or any part thereof or any other land, or that the State of West Virginia ever owned said land or any right thereto, or interest therein, or had any lawful power or authority to sell the same to said Z. C. Dingess or to attempt to do so; and avers that the pretended proceedings and deed under which said Company pretends that said lands were conveyed to Z. C. Dingess were coum non judice and void, being exparte proceedings by Chambers, commissioner of school lands. And this defendant further avers that said tracts were at the time of said pretended proceedings, part and parcel of said Morris 500,000 acre grant, and then belonged exclusively to this defendant's grantor, who was not a party to said pretended proceedings, and said State had no title or claim of title to said lands or any part thereof, and said lands now belong to this defendant, who has right and title to the same superior to said Dingess-Rum Coal Company.

13. That this defendant denies that he is precluded or es-

topped or otherwise affected by the decree of the cir-
page 72.] cuit court of the United States for the district of West Virginia entered on the 19th day of May, 1893, in the cause of John R. Reed, trustee vs. Z. C. Dingess. Said suit did not relate to the said Morris grant, but only to the grant of 100,000 acres of which said parcels of land were erroneously supposed by said Reed to be a part, but which in fact were not a part thereof, the same being part of the area excluded from said grant in the survey and patent therof. The court did not attempt to determine the merits of the respective claims of title of said parties, and said Dingess did not dare to rely upon the merits of his pretended deeds from Chambers, commissioner of school lands; and this defendant denies that it "was adjudged that the said John R. Reed, trustee, was not entitled to any estate, right or title to said parcels of land or any of them." The said Reed, trustee, alleged in his bill that the title to said 100,000 acres had been forfeited and not redeemed, and the court held that without the legal title (which he could not redeem in that court and suit) he could not maintain a bill to quiet title against said void commissioner's deeds; but the court did not decree nor decide that said Reed had not a right of redemption of said land, nor determine any right of the parties except that the complainant could not, upon a title admitted to have been forfeited years before, and which there had been no attempt or offer to redeem, maintain a bill to set aside deeds from a source not connected with said grant, as a cloud upon a title admitted to be then outstanding in the State. And his defendant is advised and avers that nothing in said decree or the decision of said court, nor anything contained in said bill or done in said suit is an estoppel or lawful hindrance to the right of this defendant to the land claimed by him, or his right to redeem the same, or his right to have his title decreed to be superior to that of said Dingess-Rum Coal Company, and to have the claim of said company adjudged to be, as it is invalid, null and void.

page 73.] 14. That this defendant admits that in the deed from John R. Reed, trustee, to John V. LeMoyne, one

of the deeds under which this defendant claims, there is a reservation of "any interlock that may exist between said 500,000 acres of land hereby conveyed and a certain other tract of land belonging to said Reed, trustee as aforesaid, containing 100,000 acres patented to William McCleary by the Commonwealth of Virginia on the 21st day of January, 1796." And it is further stated in said deed: "It is not thought that any such interlock exists, but if, by a proper running of the lines of said two surveys, it shall appear that they conflict, such interlock is not intended to be and is not, hereby conveyed." But this defendant says that the said McCleary survey contains and purports to contain a total area of 175,000 acres, of which 75,000 acres is excepted from said survey and grant on account of prior claims, and only 100,000 acres within the exterior lines of said tract was granted or purports to be granted by the McCleary grant and patent. The said exterior lines overlap the said Morris grant which is elder and was a "prior claim" to the extent of said 75,000 acres excepted, and said 75,000 acres never was a part of the land granted to McCleary, there being 100,000 acres in said McCleary grant outside of the exterior lines of said Morris grant and survey. And this defendant is advised and avers that it was the intention of the parties to said deed merely to reserve to said Reed, trustee, the land granted to said McCleary and by him conveyed to James Swan, and not any other land. And this defendant further says that said John R. Reed, trustee, was a party defendant to the original and all the amended bills of the State in the case of State of West Virginia vs. Henry C. King et als, under which title the said *preteded* petition and answer of said Dingess-Rum Coal Co. is filed, and was bound to set up in said suit his claim of title, if any he had, to any part of said Morris grant and in said suit it was adjudged and decreed on the 30th day of September, 1897, that this defendant had title to said Morris grant su-

[page 74.] perior to all other claimants, and that the other defendant therein had no title to said land or any part thereof, and that decree and adjudication has ever since remained in full force, in that respect binding and conclusive upon the said

Reed, trustee and the State of West Virginia and all persons claiming under either of them since the institution of said suit, or attempting to set up an outstanding title in said Reed, trustee, whether to the so called interlock &r to any other part of said Morris grant; and said C. W. Campbell, and others, who are the incorporators of said Dingess-Rum Coal Co. and under whom it claims, were fully cognizant of said decree and adjudication at and long before the date of the pretended purchase by said Campbell from said Reed, trustee, and from the State, and said Campbell appeared as counsel upon the appeal taken in the name of the said State from said decree, upon which appeal said decree, so far as it settled the right of the parties to said suit, was affirmed.

15. That this defendant further denies that the said Dingess-Rum Coal Co. has any valid title to any of the lands claimed by it, and says that the title of this defendant thereto is superior to that of said company or of any other claimant or person.

WHEREFORE this defendant prays that it be adjudged and decreed that said Dingess-Rum Coal Co. has no title or valid claim to any of said land, and that this defendant has good and valid right and title thereto, and that this defendant recover of said Company his costs.

HENRY C. KING.
By Counsel.

MAYNARD F. STILES, W. S. MEREDITH.
Solicitor.

[page 75.] SPECIAL ANSWER OF KING TO PETITION OF DINGESS RUM COAL CO.

(Filed in Court Oct. 4, 1905).

IN THE CIRCUIT COURT OF WEST VIRGINIA, FOR MARION COUNTY.

State of West Virginia.

vs. *In Chancery.*

Henry C. King, *et als.*

Special answer of Henry C. King concerning certain land claimed by Dingess-Rum Coal Company:

To the Honorable John W. Mason, Judge of said Court:

Now comes the defendant, Henry C. King, and says that the tracts or parcels of land situated on Rum Creek, in Logan County, and claimed by J. L. Caldwell, John Q. Dickinson and C. W. Campbell, as trustee and in his own right, and mentioned in their so-called answer herein, and later by their assignee, Dingess-Rum Coal Company, and formerly claimed by M. B. Mullens, and described in sundry patents formerly held by L. D. Chambers, and in sundry deeds made by L. D. Chambers, Commissioner of School Lands, have since the dates of said several patents and purported deeds been forfeited and sold to the State of West Virginia, and remain forfeited up to the present time, that is to say: said lands were sold as one parcel to the said State in the year 1897, for taxes delinquent and unpaid thereon, and were not redeemed from said sale within one year, as will be seen from the certificate of the Auditor of West Virginia, on file herein; and such claim of title as was held by said Mullins, in whose name said land was sold, or by any one else under said patents and purport-

[page 76.] ing deeds was extinguished and "drowned", and became irrevivable and irredeemable; and although said Campbell, having purchased said extinct claim of title, afterwards

caused a pretended decree of redemption of said land to be entered in the year 1899, in the Circuit Court of Logan County, this defendant is advised and avers that said decree is wholly void and nugatory for defects apparent on its face, and for the reason that said title or claim of title was not redeemable, and for the further reason that the cause in which said pretended decree was entered was instructed long after the institution and during the pendency of this cause, and the defendant was not a party thereto, and after this defendant had been decreed to have the right to redeem the Morris Grant.

This defendant further says that all deeds made by said Commissioner of School Lands were made when the State of West Virginia had no title or claim of title to the land therein described, and were issued in said proceedings to which neither this defendant nor any one under whom he claims, nor any one but said commissioner was a party, and of which the Court had no jurisdiction, and which deeds were fraudulent and void, as set out in this defendant's answer to the said so-called answer of Campbell et als., which answer is made a part hereof, as found and reported by the Commissioner in Chancery in this cause, to whom this cause was referred.

This defendant further says that the statute under which said motion to dismiss is made is in contravention of the Constitution of the State of West Virginia, and that the provisions of this Constitution of West Virginia under which said Campbell et als or said Dingess Rum Coal Company claims said land are in contravention of the Constitution of the United States.

page 77.] This defendant, therefore, says that this cause ought not to be dismissed as to said land, and he prays that it be not dismissed.

HENRY C. KING,
By Counsel.

MAYNARD F. STILES,
W. S. MEREDITH,
Solicitors.

page 78.] ORDER FILING SUPPLEMENT TO KINGS AMENDED PETITION.

State of West Virginia.

At a Circuit Court held in and for the County of Cabell, at the Court-house thereof on the 5th day of of July, 1901, the following order was entered:

State of West Virginia,
v. *In Chancery.*
Henry C. King et al

This day came the defendant Henry C. King and tendered the court a supplement to his amended petition filed herein at the last term of the Court, and asked leave to file the same and the same is upon his said motion ordered to be filed which is accordingly done.

page 79.] SUPPLEMENTAL PETITION OF KING.
(Filed July 5, 1901)

IN THE CIRCUIT COURT OF WEST VIRGINIA FOR THE COUNTY OF CABELL.

State of West Virginia
vs. *In Chancery.*
Henry C. King, et als.

Answer and Supplement to the Petition of Henry C. King, filed in this Court, March 22nd. 1901.

To the Honorable E. S. Doolittle, Judge of said Court:

Now comes again the defendant, Henry C. King, and presents this a supplement to his answer and petition filed herein on the 22nd. day of March, 1901, with which this is to be taken, read and considered, and respectfully shows unto Your Honor:

That this defendant here gives an accurate location and description of a further portion of the tract of land described in the decree entered herein by the circuit court for Wyoming county on the 30th. day of September, 1897, in addition to the portions thereof described in this defendant's Amended and Supplemental answer, upon which this defendant desires to pay such further sum of money, if any, in addition to the sum heretofore paid, in discharge of the taxes upon said land with interest, as may be properly chargeable thereon, to-wit:

All that portion of said Robert Morris 500,000 acre grant described in said decree of September 30th, 1897, lying in Sandy River district, in McDowell county, and bounded as follows: Beginning on Tug River fork of Sandy river about one hundred and nineteen poles above the mouth of Little War creek and on the first line of said 500,000 acre grant where the said line crosses said river and 1372.6 poles more or less from the beginning corner of said grant, the two poplars and two chestnuts on Muzzle
page 80.] creek of Little Huff creek in Wyoming county, thence S. 37° W. 2638 poles more or less crossing Panther creek to a point on the top of a ridge between Panther creek and Knox creek, in the State line between said McDowell county, West Virginia, and Buchanan county, Virginia, thence with said State line northerly, north-westerly and westerly with the top of the ridge between the waters of Panther creek and Knox creek to the point on said ridge and State line where the ridge between the waters of Panther creek and Bull creek strikes the same; thence, still along and with said State line westerly, northerly and north-easterly with the meanders of the top of the ridge between the waters of Bull creek and the waters of Knox creek and Long branch and down the point of said ridge to the mouth of said Bull creek; thence southeasterly up the said Tug fork of Sandy river with the meanders thereof to the beginning:

Excluding therefrom the following tracts and parcels of land ON BULL CREEK: 50 acres patented by the Commonwealth of Virginia to James C. Luster, December 28th, 1854, then in Tazewell

county, on the left hand fork of Bull creek, adjoining 45 acres in the name of Hiram Blankenship, and bounded as follows:

Beginning at a beech and dogwood on the east side of the Marshy bottom fork of the left hand fork of Bull creek, thence S. 73 1-2° W. 42 poles crossing said fork to two beeches near the mouth of said fork, a corner to said 45 acres, thence with the same N. 30° W. 96 poles to a white oak, thence N. 18° W. 20 poles to a maple opposite the forks of Bull creek, thence N. 24° E. 80 poles to a sugar, thence N. 4 E. 27 poles to a poplar near a hollow, thence S. 18 E. 200 poles to the beginning.

page 81.] 31 acres patented by the Commonwealth of Virginia to Presley Blankenship June 24th, 1849, then in Tazewell county on Bull creek, bounded as follows:

Beginning at two sugar trees above a camp near the forks of said creek, N. 87° W. 48 poles to a hickory and dogwood on the bank of the right hand fork of said creek S. 72° W. 110 poles to a hickory and beech, west 58 poles to a beech and maple at the point of a spur above the Lynn fork, N. 18 E. 26 poles to a white oak and two beeches on a hill side. East 72 poles to a white oak and beech on a hill side, N. 69 E. 100 poles to a white oak and beech, thence S. 49 E. 44 poles to the beginning.

47 acres patented by the Commonwealth of Virginia to Spencer Blankenship August 14th, 1844, then in Tazewell county on the right hand fork of Bull creek, bounded as follows:

Beginning at a maple, white oak and beech 66 poles from his *o* corner in a field, N. 70 W. 54 poles to a beech on a hill side, S. 10 W. 32 poles to a sugar and lynn on a steep hill side, S. 13 E. 48 poles to near a dogwood and maple on the point of a spur, S. 52 W. 84 poles to a beech and dogwood on a hillside, S. 65 W. 90 poles to two beeches in a bottom, N. 72 E. 36 poles to a white oak on a hill side, S. 73 E. 30 poles to a beech at the mo[illegible] of a hollow, N. 45 E. 184 poles to said Blankenship's old corne[illegible]s. 71 W. 44 poles to the beginning.

A boundary of ———————— acres of land claimed by G. W. Litz and particularly described in a deed recorded in book 7, page 497, of the deed records of McDowell county in the office

of the clerk of the county court of said county, to which reference is had for a more particular description.

page 82.] ON PANTHER CREEK.

14 acres patented to Isom Blankenship by the Commonwealth of Virginia on the ——— day of ————, 1840, on Trace fork, then in Tazewell county, and described as follows:

Beginning at a hickory and beech on the Trace fork of said creek N. 22 W. 80 poles to a water birch and beech on the bank of said creek, N. 82 E. 56 poles to a water birch and *creek*, S. 25 W. 50 poles to a sugar and beech, S. 4 E. 36 poles to a beech, S. 68 W. 8 poles to the beginning.

21 acres patented to Gordon Bailey by the Commonwealth of Virginia on the ———— day of ————, 1851, then in Tazewell county, and described as follows:

Beginning at a spruce pine and beech, thence S. 51 E. 40 poles to a gum and maple on the bank of the creek, S. 21 W. 48 poles to a white oak and beech at the mouth of the Trap fork, S. 71 E. 54 poles to a beech in the upper end of the Trap fork bottom, N. 40 W. 48 poles to two white *oaks*, N. 19 E. 41 poles to a lynn and gum, N. 37 W. 40 poles to a chestnut and poplar, N. 34 W. 44 poles to a gum and beech on the bank of the creek, S. 1 E. 18 poles to two spruce pines on the bank of the creek, S. 5 E. 50 poles to the beginning. Now claimed by Fleming Bailey.

34 acres at mouth of Trace fork patented to Eli Bailey by the State of West Virginia on the —— —day of ————, 1868, and recorded in the office of the Auditor of West Virginia in grant book A at page 450. Now claimed by Fleming Bailey.

100 acres patented to Eli Bailey by the State of West Virginia on the ———— day of ————, 1868, and recorded in the office of the Auditor of West Virginia in grant book A at page 450. Now claimed by Fleming Bailey.

page 83] 125 acres on Trap fork patented to Eli Bailey by the State of West Virginia on the ———— day of ———— ————, 1868, and recorded in the office of the Auditor of West Virginia in grant book A, page 452.

190 acres of land on Trace fork claimed by William McGee, Ode

Roberts and George Waldron, the survey of which is recorded in the county surveyor's book No. 1, page 3 McDowell county.

35 acres on Tug river at mouth of Panther creek, claimed by Panther Lumber Company and described in deed book 19, page 355 in the office of the clerk of the county court of McDowell county.

217 acres claimed by Panther Lumber Company and described in deed recorded in said deed book 19, page 131 of said McDowell county deed records.

Reference is had to all said records for more particular description of the said several parcels of land.

And this defendant desires to reserve the right during the pendency of this cause to exclude from said portion of said 500,000 acre grant such other parcels as he may desire to exclude and be relieved from the payment of taxes thereon.

page 84.] Also all that portion of said Robert Morris 500,000 acre grant situate in the county of Wyoming and described as follows:

Beginning at the former situation of two poplar and two chestnut trees, the beginning corner of said grant on Muzzle creek in said county, thence N. 4° E. 3030 poles more or less, crossing Guyandotte river 4-4-2 poles below the mouth of Cub creek, crossing several branches of said Cub creek to a point on the ridge between the waters of Cub creek and Elk creek in the line between Wyoming and Logan counties, thence westwardly and south-westerly along said ridge and county line to the point where the ridge between Cub creek and Leatherwood creek and where the line between Wyoming and Mingo counties strikes the ridge, thence southerly along said ridge between Cub and Leatherwood creeks with the county line between Wyoming and Mingo counties and down the point of said ridge to Guyandotte river and down the said river with its meanders to the mouth of Little Huff creek, thence southerly up the ridge between Little Huff creek and White Oak branch and along the same following said county line between Mingo and Wyoming counties to a point where the line between Wyoming and McDowell counties strikes said ridge and county line, thence south-easterly following said county line between Wyoming and

McDowell counties along the ridge between the waters of Little Huff creek on the north and the waters of Long Pole and War creek on the south to the point in said county line where the first line of the exterior boundary of said grant running S. 37° W. from said beginning corner on Muzzle creek crosses said line, thence N. 37° E. with said last mentioned line 706.5 poles to the beginning. Situate in ———————— District.

But this defendant desires the right during the pendency of this cause to exclude from said portion of said Morris grant
page 85.] such parts and parcels thereof as he may desire to exclude and be relieved from the payment of taxes thereon.

WHEREFORE this defendant and petitioner prays as in and by his said answer and petition to which this is a supplement, he hath prayed. And thus will he ever pray, etc.

HENRY C. KING.
By Counsel.

MAYNARD F. STILES.
Solicitor.

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page 86.] ANSWER OF GUARDIAN AD LITEM.
(Filed July 5, 1901)

The joint and separate answer of the defendants Nicholas Gibson, Halsey Gibson, Levi Gibson, Clara Mounts, Viola G. Wiley, Byron L. Wiley, Ella Sidebottom, Flora Hale, Laura Hale, Beatrice Hale, Lona Mounts, Leander Mounts, Don Mounts, Mordecai Mounts, Aila Mounts, Alta Mounts, Jesey Mounts, Cora V. Steele, S. Columbia Steele, Cecil Perry, Lon Perry, and Preston Perry, infants under the age of twenty-one years, by H. C. Ragland, their guardian ad litem to the original and amended bills of complaint of the State of West Virginia against Henry C. King, the above named infants and others, now pending the circuit court of Cabell county, West Virginia.

To the Honorable E. S. Doolittle, Judge of said court:

The above named infant defendants, by their said guardian ad

litem, without waiving their right to make any defense to said bills, or either of them, by way of demurrer or otherwise, by reason of the many imperfections, etc. therein, for answer thereto, say:

That they are infants of tender years, and, for that reason, are incapable of understanding, protecting or defending their interest in the subject matter involved in said suit, and therefore submit themselves, their rights and interests to the protection of the court, and pray that no decree be entered against them prejudicial to their rights and interests in the premises.

And having fully answered, pray to be hence dismissed with their reasonable costs, etc.

NICHOLAS GIBSON
HALSEY GIBSON
LEVI GIBSON
CLARA MOUNTS
VIOLA G. WILEY
BYRON L. WILEY
ELLA SIDEBOTTOM
page 87.] FLORA HALE
LAURA HALE
BEATRICE HALE
LONA MOUNTS
LEANDER MOUNTS
DON MOUNTS
MORDECAI MOUNTS
ALLA MOUNTS
ALTA MOUNTS
JOSEY MOUNTS
CORA V. STEELE
S. COLUMBIA STEELE
CECIL PERRY
LON PERRY
PRESTON PERRY
By H. C. Ragland,
Guardian ad litem.

McDowell counties along the ridge between the waters of Little Huff creek on the north and the waters of Long Pole and War creek on the south to the point in said county line where the first line of the exterior boundary of said grant running S. 37° W. from said beginning corner on Muzzle creek crosses said line, thence N. 37° E. with said last mentioned line 706.5 poles to the beginning. Situate in ———————— District.

But this defendant desires the right during the pendency of this cause to exclude from said portion of said Morris grant

page 85.] such parts and parcels thereof as he may desire to exclude and be relieved from the payment of taxes thereon.

WHEREFORE this defendant and petitioner prays as in and by his said answer and petition to which this is a supplement, he hath prayed. And thus will he ever pray, etc.

HENRY C. KING.
By Counsel.

MAYNARD F. STILES.
Solicitor.

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page 86.] ANSWER OF GUARDIAN AD LITEM.

(Filed July 5, 1901)

The joint and separate answer of the defendants Nicholas Gibson, Halsey Gibson, Levi Gibson, Clara Mounts, Viola G. Wiley, Byron L. Wiley, Ella Sidebottom, Flora Hale, Laura Hale, Beatrice Hale, Lona Mounts, Leander Mounts, Don Mounts, Mordecai Mounts, Alla Mounts, Alta Mounts, Josey Mounts, Cora V. Steele, S. Columbia Steele, Cecil Perry, Lon Perry, and Preston Perry, infants under the age of twenty-one years, by H. C. Ragland, their guardian ad litem to the original and amended bills of complaint of the State of West Virginia against Henry C. King, the above named infants and others, now pending the circuit court of Cabell county, West Virginia.

To the Honorable E. S. Doolittle, Judge of said court:

The above named infant defendants, by their said guardian ad

litem, without waiving their right to make any defense to said bills, or either of them, by way of demurrer or otherwise, by reason of the many imperfections, etc. therein, for answer thereto, say:

That they are infants of tender years, and, for that reason, are incapable of understanding, protecting or defending their interest in the subject matter involved in said suit, and therefore submit themselves, their rights and interests to the protection of the court, and pray that no decree be entered against them prejudicial to their rights and interests in the premises.

And having fully answered, pray to be hence dismissed with their reasonable costs, etc.

NICHOLAS GIBSON
HALSEY GIBSON
LEVI GIBSON
CLARA MOUNTS
VIOLA G. WILEY
BYRON L. WILEY
ELLA SIDEBOTTOM
page 87.] FLORA HALE
LAURA HALE
BEATRICE HALE
LONA MOUNTS
LEANDER MOUNTS
DON MOUNTS
MORDECAI MOUNTS
ALLA MOUNTS
ALTA MOUNTS
JOSEY MOUNTS
CORA V. STEELE
S. COLUMBIA STEELE
CECIL PERRY
LON PERRY
PRESTON PERRY
By H. C. Ragland,
Guardian ad litem.

page 88.] ANSWER OF JAMES HATFIELD, M. A. HATFIELD AND MOSES BLANKENSHIP.

(Filed July 5, 1901)

In the Circuit Court of Cabell County.

State of West Virginia
vs.) *In Chancery*
H. S. King and Others.

THE JOINT ANSWER OF JAMES HATFIELD, M. A. HATFIELD AND MOSES BLANKENSHIP TO THE BILL IN THE ABOVE CAUSE AND TO THE FIVE AMENDED BILLS.

To the Honorable Edward S. Doolittle, Judge of said Court:

The defendant James Hatfield alleges that he is the owner in fee simple absolute of seven several tracts of land, containing 470, 600, 20, 130, 15, 25 and 182 acres respectively, comprising a boundary of about 1442 acres, be the same more or less, situate on Ben Creek, and its waters, in Magnolia District, in Mingo County (formerly a part of Logan), West Virginia. Said several tracts of land are situate adjoining or contiguous to each *others.*

That the said James Hatfield holds title to said parcels of land by a regular chain of conveyance from the Commonwealth of Virginia or State of West Virginia down to him.

That on the 14th. day of June, 1884, Joseph Hatfield, Sr. and others by certain deed of bargain and sale as of that date, granted and conveyed unto the said James Hatfield a certain tract of land situate as aforesaid, containing, 15 acres, more or less, it being the same 15 acres above mentioned and described

That said deed was recorded in Logan County Court Clerk's Office in Deed Book "H" at page 525.

That on the 28th day of May, 1890, one M. A. Hatfield, and others by a certain deed of bargain and sale bearing date last aforesaid, sold and conveyed unto the said James Hatfield a certain tract or parcel of land situate as aforesaid, containing 20 acres, more or less and an additional tract of six acres being a part and parcel of the 15 acre tract above mentioned, which said last mentioned deed was recorded in Deed Book "2." at page 501, and re-recorded in said Clerk's office in Deed Book "R" at page 591, etc.

page 89.]

That on the 30th. of November 1885, one Ballard Ellis and wife, by a certain deed as of that date, granted and conveyed unto the said James Hatfield a certain boundary of land containing 600 acres, be the same more or less, situate as aforesaid, which said deed was recorder in Deed Book "J", at page—— in the said Clerk's office; it being the same 600 acres above mentioned.

That on the 14th. of June, 1884, the said M. A. Hatfield by a certain deed as of that date granted and conveyed unto the said James Hatfield a certain parcel or tract of land situate as above containing 130 acres, be the same more or less, which said deed was recorded in deed book "H" at page 527; it being the same tract hereinbefore mentioned as 130 acres.

That on the 12th. day of March, 1889, L. D. Chambers, Commissioner of School Lands, be a certain deed as of that date granted and sold unto the said James Hatfield a certain parcel or tract of land containing 470 acres, the same 470 acre tract above mentioned and situate as aforesaid, which said deed was recorded in said Clerk's office, in Deed Book "N" at page 289.

That on the 6th. day of August, 1892, Jesse N. Irwin and others, by a certain deed as of that date, granted and sold unto the said James Hatfield, a certain piece, parcel or tract of land, situate as aforesaid, containing 182 acres, and a second or additional tract containing 39 3-4 acres, which said deed was re-

corded in Book 2, at page 421, the said 39 3-4 acres being the same parcel of land charged on the land books as 25 acres.

The said James Hatfield files herewith as part hereof his six several original deeds above mentioned and describ-
page 90.] ed, as part hereof, marked respectively, "Exhibits James Hatfield Nos. 1, 2, 3, 4, 5, 6".

That the defendant M. A. Hatfield is possessed in fee simple absolute of six several tracts of land, containing 151, 30, 200, 67, 30 and 60 acres respectively, aggregating 538 acres be the same more or less, situate on said Ben Creek and the waters thereof, in said District and County, acquired by him as follows:

On the 4th, of October, 1883, L. D. Chambers, by deed as of that date, granted, sold and conveyed unto the said M. A. Hatfield (known as Mitchell Hatfield) a certain piece, parcel or tract of land, containing 151 acres, being the same parcel above mentioned and situate as aforesaid, which deed was recorded in said Clerk's Office in Book "H", at page 272, etc.

That on the 14th, of June, 1884, one Joseph Hatfield by a certain deed as of that date, granted and conveyed unto the said M. A. Hatfield a certain piece, parcel or tract of land situate as aforesaid, containing 30 acres, be the same more or less; it being the same 30 acres above mentioned, situate as aforesaid, which said deed was recorded in said Clerk's Office in Book "H" at page 526.

That on the 14th, of June, 1884, one Aly Hatfield and others, by a certain deed of bargain and sale bearing date last aforesaid, granted, sold and conveyed unto the said M. A. Hatfield two certain tracts or parcels of land, situate as aforesaid, containing 100 acres each, it being the same parcel above described as 200 acres, which deed was recorded in Book "H", at page 538, etc.

That on the .....day of....., Alex Trent and wife by a certain deed as of that date, bargained, sold, granted and conveyed unto the said M. A. Hatfield the said parcel of

67 acres which said deed was recorded in said Clerk's office on the .....day of.....

That on the .....day of ..... Warren Alderson, by a certain deed as of that date, granted and conveyed unto the said M. A. Hatfield the two parcels of 30 and 60 acres of land, which said deed was recorded in said Clerk's Office on the ..... day of .....

page 91.]

That the six several tract of land thus claimed and owned by the said M. A. Hatfield, lie contiguous and adjoining to each other and make up one compact body of land.

The defendant M. A. Hatfield files herewith, as part hereof, the several deeds aforesaid, together with certain other papers relating to his title to said land, and to be read in connection herewith, marked "Exhibit M. A. Hatfield, Title Papers."

That the defendant Mose Blankenship is the owner of three several tracts of land, containing 4, 150 and 152 acres respectively, situate on Bull Creek in the edge of McDowell County, near the Mingo County line and he derived title thereto, as follows:

About the year 1873 the said Mose Blankenship bargained, sold, granted and conveyed unto Conley Blankenship a certain boundary of land containing..... acres, situate on said Bull Creek, by deed recorded in said McDowell County Court Clerk's Office in Deed Book No..... page.....

That on the 1st, of April, 1896, the said Conley Blankenship and wife by his certain deed as of that date, bargained, sold, granted and conveyed unto the said Mose Blankenship the said parcel of 150 acres, which deed was recorded April 1st, 1896, in Deed Book No. 20, at page 455, in said McDowell County Court Clerk's Office.

That on the 1st, day of August, 1895, the Commonwealth of Virginia granted unto Christian Cline a certain parcel or tract of land, containing 102 acres, situate on said Creek, by letters patent, recorded in Book 116, at page 393.

page 92.]

That said Christian Cline afterwards, by deed dated the .....day of ....., conveyed said

boundary mentioned in said patent, to Conley Blankenship. That said Conley Blankenship conveyed the same by deed to his daughter Armeda Blankenship, now the wife of F. L. Riffe, by a certain deed bearing date on the..... day of.....

That the said F. L. Riffe (called Floyd Riffe) and Armeda, his wife, by a certain deed of bargain and sale dated April 10, 1885, granted and sold unto the defendant Moses Blankenship two parcels of land, described as 50 and 102 acres, respectively, which said deed was recorded in McDowell County Court Clerk's Office, in Deed Book No. 7 at page 532 which two tracts of 50 and 102 acres respectively, constitute the parcel known as 152 acres above mentioned.

That on the 3rd. day of August, 1894, Cloyd Bailey, etc by deed as of that date, conveyed to G. W. Hurley three acres of ground, which deed was recorded in Deed Book No. 19, at page 60 in said McDowell County Court Clerk's Office.

That on the 25th, of June, 1894, N. B. Dotson, by a certain deed as of that date, granted and conveyed unto said G. W. Hurley a small portion of land supposed to be about one acre, situate adjoining said tract of three acres, which deed was recorded in McDowell County Court Clerk's Office August 30th, 1894.

That on the 12th, day of June, 1893, the said N. B. Dotson by a certain deed as of that date, granted and conveyed unto the said G. W. Hurley a certain piece, parcel or tract of land situate on the bank of Tug River, containing..... acres, situate adjoining said tract last above mentioned, which said deed last mentioned was recorded in said McDowell Clerk's Office, in Deed Book 17, at page 212.

That on the 13th, of September, 1899, the said G. W. Hurley and wife, by their certain deed of bargain and sale
page 93.] bearing the date last aforesaid, sold and conveyed unto the said Moses Blankenship, defendant, the three several parcels of land last mentioned, set forth and described, supposed to make up a boundary of four acres, be the same or less, which said deed was recorded November 4th.

1899, in Deed Book No. 24, at page 375, in said Clerk's Office.

That the three parcels of land making up said boundary of four acres lie adjoining and contiguous to each other, forming a compact body of land.

That the title of the defendant Moses Blankenship to said four acres emanated in a patent from the Commonwealth of Virginia to one Cloyd Bailey, for ..... acres, dated the..... day of ..... and that the title to said four acres was regularly passed to the refendant Moses Blankenship by a regular chain of title papers leading down from the said Commonwealth of Virginia to the said Moses Blankenship.

That defendant Moses Blankenship herewith filed, as part hereof, his several deeds for the lands claimed and owned by him as above described, and certain other papers pertaining to his title thereto, and asks that they be read, taken and considered as part of this answer, which said deed and papers are marked "Exhibit Moses Blankenship Title Papers".

That by virtue of the deeds aforesaid, these defendants as above set forth, are the owners of the several boundaries and tracts of land as hereinbefore described, respectively, freed from the claim of the state of West Virginia or of the said Henry C. King as well as all others.

That all taxes or levies charged or chargeable upon each of said parcels of land to the respective owners thereof, as hereinbefore set forth, have been regularly paid by these defendants, respectively, and those under whom they claim, respectively, for each and every year, and neither of said pieces or parcels of land are delinquent or forfeited for the nonpayment of taxes or levies charged or chargeable thereon, or for the nonentry thereof on the land books.

page 94.]

POSSESSION.

These defendants respectively, and those under whom the claim respectively, to hold said land, have had and held continuously, the actual, visible, exclusive, adverse, and uninterrupted possession of said parcels of land claimed or owned by them, re-

spectively, from the date of said deeds down to the present time, claiming the same and every part thereof under and by virtue of their title papers aforesaid, and to the extent of the bounds and abuttals specified and set forth in said title papers, respectively, and in the papers and records therein referred to.

These defendants allege that the said Morris grant does not cover their several pieces, parcels and tracts of land above mentioned, set forth and described, and allege that the location of said survey as made by one W. D. Sell, is not the true location of said survey, and these defendants refer to the said answer, and rely upon the defense and upon the same state of entitled "Morris Grant, location of", and adopt that portion of said answer under said heading, as part and parcel of this answer, and rely upon the defense and upon the same state of facts and circumstances under said heading set forth, as much so and to the same extent were the allegations in said answer of Wood and others under said heading of "Location" herein repeated.

BENEFIT OF FORFEITURE.

These defendants allege that the said title of the said H. C. King or those under whom he claims, has long since been forfeited in the manner and form and to the extent as is alleged in the answer of the defendants Wood, Harvey, Miller, Altizer and Nighbert, filed in this cause, and these defendants claim the benefit of such forfeiture and refer to the al-
page 95.] legation of said answer of Wood and others above referred to, under the heading "Benefit of Forfeiture", and adopt the allegations under said heading as part and parcel of this answer, as much so as if such allegation were herein repeated in extenso.

These defendants also reply upon and adopt as part of this answer, the allegations of the said answer of Wood, Harvey and others, so far as the subject of escheat in said answer of Wood and others is referred to, as much so as were the allegations of

said answer of Wood and others under the heading of escheat herein set forth at large.

These defendants for further answer to said bill, do hereby adopt each, every and all of the allegations of the said answer of Wood and others found on pages 24, 25, 26, 27, 28, 29 and 30 of said answer, as much so and to such extent as if said allegation found on said pages from 24 to 30 (both inclusive) were herein repeated at large.

These defendants, therefore, pray that this their answer may be filed and that this court will hear try and determine all questions of forfeiture, escheat, title, possession, boundary and conflict of title, and that it may be adjudged that the lands of these defendants are free from the claim of said Henry C. King, and that the forfeiture of the said Morris grant claimed by said King has inured to their benefit and that they have taken the benefit of the escheat or forfeiture of any other title or color of title, if any, to their said lands, and that they and those under whom they hold, have had actual, exclusive, open and continuous possession of said lands for the period required by law, and have thereby barred and acquired all adverse title, if any, and for such further and general relief as the Court may see fit to grant.

JAMES HATFIELD,
M. A. HATFIELD,
MOSES BLANKENSHIP.
By Counsel.

SHEPPARD & GOODYKOONTZ.

page 96.] ANSWER OF KING TO ANSWER OF JAMES HATFIELD ET. ALS.

(Filed Dec. 19, 1902.)

IN THE CIRCUIT COURT OF WEST VIRGINIA FOR THE COUNTY OF CABELL.

State of West Virginia
vs.) *In Chancery.*
Henry C. King, et als.

The answer of defendants Henry C. King to a bill of complaint filed against him in the above entitled cause by James Hatfield, M. A. Hatfield and Moses Blankenship, but by them miscalled an answer to the Bill and five Amended Bills of the State herein:

To the Honorable Edward S. Doolittle,
Judge of said Court:

The defendant Henry C. King, not waiving his demurrer to the said bill of the Hatfields and Blankenship, but insisting and relying upon the same, for answer to their said bill of complaint or so much thereof as he is advised that it is material for him to make answer unto, says:

1. That this defendant denies that the said James Hatfield, M. A. Hatfield and Moses Blankenship are, or that either of them is, the owner of any of the tracts of land set out in their said bill or have or has any title thereto, or any regular chain of conveyance therefor from the Commonwealth of Virginia or from the State of West Virginia.

2. That if it is true, which this defendant does not admit, that any conveyance was made to any of the said plaintiffs or to any person under whom they claim by the said States or either of them, or by the commissioner of school lands, pretending to convey the tracts of land claimed by the said plaintiffs or any of said tracts, that such pretended grants and conveyances were

unauthorized and were and are illegal, invalid, null and void, and no right or title to any of said land was conveyed or passed thereby.

[page 97.]

3. That the said Jesse R. Irwin and his associates, under whom the defendant Hatfield claims ownership of the tracts of 182 acres and 39 3-4 acres by deed dated August 6, 1892, neither at that time nor at any other time owned said land or any part thereof nor any interest therein or had any possession thereof or color of title thereto, which the said Hatfield well knew, and the said Hatfield never acquired and has not now any title or valid or bona fide claim of title to either of said two tracts of land.

4. That at the time of the pretended conveyance from Conley Blankenship and wife to Moses Blankenship of the lands mentioned in said bill, the said Conley Blankenship had neither title, color of title, possession nor right of possession, nor claim of title of any kind to the land therein described, which fact was well known to the said Moses Blankenship, and the said Moses has neither any right, title or interest or any valid or bona fide claim of title to any of the land embraced in said pretended conveyance, nor any valid title to any of the other tracts of land claimed by him.

5. That this defendant denies that the said plaintiff or either of them or those under whom they claim have had or held continuously the actual visable, exclusive, adverse or uninterrupted possession of said parcels of land or any of them from the date of the deeds under which they claim down to the time of the filing of their said bill, to the extent of the boundaries therein described, or that they or any of them have had any possession whatever of any of said lands.

6. That this defendant is not sufficiently informed as to whether or not the said plaintiffs or either of them or those under whom they claim have regularly or otherwise paid all taxes or any taxes upon said tracts of land or any of

[page 98.]

of them, and therefore denies that they or any of them have paid such taxes and demands proof

thereof, if such payment of taxes be in anywise material.

7. And for answer to that portion of the bill of the said Blankenship and Hatfields, which refers to and adopts the matters of forfeiture, title, etc. set out in the bills of Wood Harvey, Miller, Altizer and Nighbert, this defendant refers to his answer to the bills of C. W. Campbell, Harvey Miller, Altizer, Nighbert and others, and his answer to the bill of Stewart Wood, relative to said matters, and makes the same and all of said answers except the portions thereof relative exclusively to the tracts of land claimed by the said Wood, Campbell, Harvey and others, part hereof to the same extent as if the same were here reiterated tnd set out at large.

8. And for further answer this defendant says that the said plaintiffs, Hatfield and Blankenship, ought not to maintain their said bill because they have plain, complete and adequate remedy at law in the actions of ejectment brought by this defendant against them in the circuit court of the Unied States for he district of West Virginia in 1895, and now pending in the United States circuit court for the southern district of West Virginia, for the recovery of the said Robert Morris 500,000 acre grant claimed by this defendant, of which the said parcels of land claimed by the said Hatfields and Blankenship are part and parcel.

9. And this defendant further says that this court is withoue jurisdiction to entertain the bill of said plaintiffs or this proceeding.

WHEREFORE this defendant prays that the said bill of complaint of the said Blankenship and Hatfields be dismissed and that this defendant go hence with his costs.

HENRY C. KING,

By Counsel.

MAYNARD F. STILES,
Solicitor.

page 99.] ORDER FILING ANSWER OF CHARLES L. TRACY.

State of West Virginia.

At a Circuit Court held in and for the county of Cabell, at the Court-house thereof, on the 7th day of July, 1901, the following order was entered:

State of West Virginia
v.) *In Chancery.*
Henry C. King, *et al.*

This day Chas. L. Tracy tendered his separate answer, to the filing of which, the defendant Henry C. King objected, which objections were overruled and said answer filed and the plaintiff replied thereto generally

page 100.] ANSWER OF C. L. TRACY
(July 9, 1901)

IN THE CIRCUIT COURT OF CABELL COUNTY
JULY TERM, 1901.

State of West Virginia
vs.) *In Chancery.*
Henry C. King.

THE SEPARATE ANSWER OF CHAS. L. TRACY.

TO THE ORIGINAL AND FIVE AMENDED BILLS FILED IN THE ABOVE CAUSE, OR TO SO MUCH AND SUCH PARTS THEREOF AS IT IS ADVISED IT IS MATERIAL IT SHOULD ANSWER.

ANSWERS AND SAYS AS FOLLOWS:

It may be true, as alleged in said bills, that on the 23rd, of

June 1795, the Commonwealth of Virginia issued to Robert Morris assignee of Wilson Carey Nicholas, letters patent purporting to convey unto him a certain boundary of land therein described by metts and bounds, and described as containing 500,00 acres, and now situate in the States of Virginia, West Virginia and Kentucky, but the greater portion thereof in the State of West Virginia; but it denies that the boundary of land so granted and therein described, contained, but it denies that the boundary of land so granted and therein described, contains 500,000 acres, but, on the contrary, avers that there was and is not but 111,000 acres thereby granted and embraced within the lines and abuttals given in said patent; but this defendant denies the issuance and deliverance of such patent, and calls for strict proof thereof.

It may also be true, as alleged in said bills, that on the 16th. day of November, 1795, the said Robert Morris executed a deed to James Swann purporting to convey said tract of land to him; but this defendant does not admit the execution and delivery of said deed, or the conveyance of said boundary of land to said Swann, but denies the same, and calls for strict proof thereof.

It may not be true that the said James Swan de-
page 101.] parted this life on the ..... day of May, 1831, as alleged in said bills, but this defendant denies the further allegation in said bills that said James Swan upon his death, left said boundary of land to the benefit of his creditors.

He also denies the further allegation in said bills that afterwards, to-wit, in the year 1838, by an act of the General Assembly of Virginia, said tract, among others, was released from forfeiture for taxes.

He also denies that the said tract was vested in John Peter Dumas, as trustee, for the benefit of Swan's creditors, by virtue of the act of the General Assembly, passed on the 15th. day of March, 1838, or in any manner vested in said trustee for any purpose whatsoever, and it denies that the said trust was kept up by successive appointments, and the said tract of land at any time

vested in Robert E. Randall, as trustee. He admits the further allegation in said bills that for a portion of the time from the year 1838 until the year 1881, there was no taxes paid on said land; and it is true also that the title originally granted, if any at all, to the said Robert Morris, such title, after the date of said alleged patent, became forfeited to the State of Virginia, and also to the state of West Virginia.

It is true, as this defendant is informed and believes, that about the year 1881, an administrative proceeding was instituted by the Commissioner of School lands of Wyoming county, in the circuit court of that county, the object of which was to sell said tract of land as forfeited to the State, for the benefit of the school fund. It is also true that the said Robert E. Randall, trustee, filed his petition in said proceeding, alleging his ownership as such trustee, of 200,000 acres of said Morris grant; and that he held a mortgage lien upon the remaining 300,000 acres of said grant, and that as owner of part of said land, and as mortgage creditor of the owners of the residue of said land, he had a right to redeem the same from the alleged forfeiture. And said proceeding was referred to a commissioner to ascertain the taxes due and unpaid upon the said tract of land; and it was ascertained and

page 102.] reported that there was due upon the whole boundary of land unpaid taxes amounting to a large sum of money, to-wit, $150,000.00; but the said Robert E. Randall, trustee, and the Circuit Court of said county, and the commissioner of school lands of said county, recognizing the fact that the title so forfeited, had been transferred to and vested in certain junior claimants as to divers and sundry portions thereof, under and by virtue of the constitution and laws of the State, and levying but a small portion of that part of said survey lying in West Virginia, the title whereto still remained in the State, it was estimated that the unpaid taxes on such portions so vested in the State amounted to $8,000.00; and thereupon the said Randall, trustee, paid into court the said last named sum, and he redeemed thereby only those portions, the title whereto then remained in the State, and he did not then and there or at any other time or place, pay any

taxes whatsoever upon any other portions of said land so situate in West Virginia. And this defendant avers that prior to that time, the predecessor of the said Robert E. Randall had caused the said Morris grant to be located upon the ground, and it was thereby ascertained that said grant contained only 111,000 acres, and not 500,000 acres, and the western boundary line was located as running from the southwest corner on the Ray's fork of Knox creek, in the State of Kentucky, in a northeast direction, crossing Knox creek at about four miles, and Tug fork of Sandy at the mouth of Turkey creek at about twelve miles, and crossing the dividing ridge between said Tug creek, and crossing Gilbert's creek twice to three sugar trees in a little bottom, standing on the bank of Guyandotte river, twenty poles below the mouth of Gilberts creek. And the said Robert E. Randall recognized that survey as the correct location of said Morris grant, and did not in said alleged redemption, pay any taxes whatsoever upon any land whatsoever lying to the west of said line so located. And the said Robert E. Randall, trustee, abandoned to all adverse claimants the several portions of said Morris grant, then held by them respectfully, and he refused to pay any taxes on such

page 103.] portions.

This defendant is informed, believes and charges that on the 30th. day of August, 1830, the said James Swan executed and delivered a deed, as alleged by the said Henry C. King in his petition and answer, purporting to convey to one Samuel Allison *inter alia* the said Morris grant and thereby divested himself of all the estate, right, title and interest, both in law and in equity, in and to said boundary of land, and he never thereafter became entitled to any interest or estate in said land, or any title whatsoever. Therefore this defendant avers that the said tract of land did not pass to the said John Peter Dumas, trustee, under and by virtue of the act of the General Assembly of Virginia, passed on the 15th. day of March, 1838, which purported to vest, by general reference, but without specific mention or description, certain lands of which the said James Swan may have died seized, by title, legal or equitable.

This defendant further avers that on the 29th. day of September, 1846, the said John Peter Dumas, trustee, executed and delivered a deed purporting to convey to John Joseph Marie Schmidt Thornfeld 300,000 acres out of the alleged Morris grant of 500,000 acres, but reserved a vendor's lien thereon for the sum of $————————, and the said Thornfeld on the ——— day of October, 1846, executed and delivered a deed purporting to convey said 300,000 acres to Auguste Marie Francois Novino de Sericourt and Louis Antoine de Maupertius, managers and legal representatives of the Virginia Company Guyandotte, a corporation under the laws of France; and this defendant avers that the 300,000 acres so granted, are consumes all the land described in the afore mentioned patent to Robert Morris.

This defendant further avers that on the 20th. day of April, 1850, Isaac Morgan, then escheator of Logan county, by an inquisition of escheat taken by him, as such echeator, commenced, conducted and concluded in the manner provided by law, before a regular jury of inquisition returned by the sheriff, and *dult* sworn and empaneled according to law, ascertained, found and determined by such inquisition that the 300,000 acres aforesaid, part of the Morris grant aforesaid, was escheated to the Commonwealth of Virginia, because the title thereto, legal and equitable, was in an alien or aliens and not in a citizen or citizens, or residents of the United States. A copy of such inquisition, duly certified, will be filed herewith as part hereof; and it also avers that at the same time and by the same escheator, the residue of said alleged grant, which said residue was described as containing 200,000 acres, was in like manner escheated to the Commonwealth of Virginia, because the owners thereof were aliens and not citizens and residents of the United States. A copy of said inquisition, duly certified, will in due time be filed herewith as part hereof.

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This defendant further avers that the claim of title set up by the said Henry C. King in his petition to three-fourths undivided of the said Morris grant, under and by virtue of a certain quit-

claim deed by the Pittsburg National Bank of Commerce to David W. Armstrong, and the deed from said Armstrong to said King, copies of which deeds are filed by the said King with his petition, is null and void, because no title was ever vested in the said bank, and because of the allegations and matters of law and face alleged in that behalf in the answer of C. W. Campbell and others and T. H. Harvey and others, filed in this cause, to which answers this defendant here makes reference and adopts said allegations as part and parcel of this answer; and it avers that the allegations and facts therein contained in that behalf, are true.

This defendant further avers that at the time of the making and delivery of said deed by the said Swan to said Allison, the legal title to said grant had become vested either in the Commonwealth of Virginia or in the President and Directors of the Literary Fund by sale of said land in the manner provided by law for the taxes legally assessed thereon in the name of said James Swan, as averred by the said Henry C. King, at that time the said James Swan had merely a right of redemption of such

page 105.] portions of said grant as had not, under the laws of the State of Virginia, been transferred and vested, on such forfeiture, in junior claimants, and such right of redemption passed to and vested in Samuel Allison, under and by virtue of said deed of the 30th. day of August, 1830. Said sale and purchase by the State aforesaid, and the forfeiture thereby of the said grant, was never redeemed, or the land released or exonerated therefrom, and such delinquent taxes were never paid by the said James Swan, his heirs, devisees or assigns, and no taxes whatever after the year 1815 were assessed to or paid by said James Swan, his heirs, devisees or assigns; and the said land was never again entered upon the land books and assessed with taxes after said sale and forfeiture by and in the name of said Swan, his heirs, devisees or assigns; and the title to said land, so acquired at such sale thereafter remained either in the Commonwealth of Virginia or in the President of the Literary fund until the formation of the State of West Virginia, except to such portions thereof as were

situate in the State of Kentucky, or to such portions thereof as were claimed by junior occupants to whom the title so forfeited was transferred by law, or to such portions thereof as were subsequently granted by said Commonwealth to sundry persons on the formation of the State of West Virginia, the title then remaining in either the said Commonwealth or President and Directors of the Literary Fund to that portion of said grant embraced in said State of West Virginia, passed to and vested in said State, and it there remains, except to such portions thereof as have been since the 20th. day of June, 1863, granted, sold or conveyed by said State, either by letters patent or by deeds executed on her behalf by the several commissioners of school lands of the several counties where said land is situate.

This defendant therefore insists that said Morris grant did not pass to the said John Peter Dumas, trustee, under said act of the 15th. of March, 1838, because said James Swan was not seized thereof at his death, by title legal or equitable. But if it be in error in this respect, and if said land
page 106.] did pass to said Dumas, trustee, under said act, then it avers that the said Dumas, trustee, on the 29th day of September, 1846, had parted with title to 300,000 acres as hereinbefore alleged, and the said 300,000 acres had been escheated as aforesaid to the Commonwealth of Virginia and was not subject to redemption, and said inquisition of escheat was never set aside, vacated or annulled, but remained and now still remains in full force and effect.

This defendant denies that said Henry C. King has any title, right or estate in and to the said 300,000 acres, or any right to redeem the same, because from the fact that the same had been escheated as hereinbefore stated, and because the deed from John R. Reed, trustee, did not in fact convey any title or right to said 300,000 acres, because he was not vested with such right or title as would permit him to sell or convey the same, and the deed from the Pittsburg National Bank of Commerce hereinbefore mentioned did not pass any title to the said 300,000 acres, because no right or title was vested in said Bank. This

defendant avers that the title to the 300,000 acres aforesaid was vested in the Commonwealth of Virginia by the inquisition of escheat as aforesaid; but, if this defendant be in error in this respect, the title thereto did vest in said Commonwealth by purchase of said land at a sale thereof made for the non-payment of taxes legally assessed thereon in the name of the Virginia Company Guyandotte, as will appear by reference to the several certificates of the Auditor of Public Accounts of Virginia, which will in due time be filed as part of this answer. Said 300,000 acres was never redeemed from such sales, and no taxes have been paid on said 300,000 acres, or any portion thereof, in West Virginia since 1863 by the Virginia Company Guyandotte or by any one claiming under it or its trustees, except by those to whom said forfeited title has been transferred by patents, deeds, or by the constitution and laws, and on such portions so transferred, taxes have been assessed to and paid regu-

page 107.] larly by such transferees, patentees or grantees claiming under them.

This defendant avers that the title to the said 300,000 acres so vested in Thornfeld, and afterwards in said Sericourt and Maupertuis, trustee for the Virginia Company Guyandotte, did not pass to the said Anthony Lawson under the patented deed from James M. Laidley, Special Commissioner, not only for the reasons hereinbefore set out, but also because said 300,000 acres was not decreed to be sold, nor was it in fact sold, nor was it decreed to be conveyed, nor was it in fact conveyed by such Special Commissioner. There was no lien thereon of any character whatsoever in favor of the alleged plaintiff, Claude Bernarde. The said Thornfeld had long prior to said pretended deed parted with his alleged interest in said 300,000 acres, and the same was held by the said Sericourt and Maupertuis in trust for the Virginia Company Guyandotte, as aforesaid, and the said Company was not before said Logan Circuit Court in said pretended suit as a party, or otherwise, and the said Emile Dumas had no title or interest whatsoever in said 300,000 acres. The said Morris grant was then held by moieties, and only one moiety thereof is claimed to have been

subject to the alleged debt of the said Bernarde, and the other moiety to the cost of suit.

This defendant further avers that the lien for the purchase money thereof due from the said Thornfeld to said Dumas, trustee, reserved in a deed of the 27th of September, 1846, has never been enforced by decree or otherwise in any suit, and said mortgage debt for the balance of purchase money, if not long since paid, has been barred by the statute of limitations for many years, and this defendant pleads and relies upon the bar of said statute so far as said mortgage may affect any of its lands.

This defendant denies that the Circuit Court of the United States for the District of West Virginia had any power or jurisdiction in the suits alleged to have been removed thereto, to-wit, the suits of _____

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_____

to direct a sale of said Morris grant, or of any power or interest therein, and the alleged sale thereof, made by the said John R. Reed, trustee, to said David W. Armstrong, so far as it depends upon any decree of said court, is void, and such sale is void because the Circuit Court of Kanawha county, if it had jurisdiction over said Morris grant in the suit last above named, which this defendant denies, had directed a public sale of said grant, and said Reed, trustee, had no power to make a private sale, and the decree directing a public sale has never been set aside or annulled.

This defendant avers that neither Wilson Carey Nicholas, or Robert Morris, nor James Swan, nor the heirs or devisees of either of them, nor the assigns, immediate or remote of either, nor any person claiming mediately or immediately under the said act of the General Assembly of Virginia, passed on the 15th day of March, 1838, nor those claiming mediately or immediately under said deed from said Laidley, special commissioner, ever took actual or physical possession of said 500,000 acres, or any part thereof, at any time, or for any period from the 23rd. day of June, 1795, to the present time, but they, and

each of them, having neglected and refused to pay any taxes which were chanced to be assessed thereon at intervals, or to report said land for the major portion of that time, or to cause the same to be entered on the land books of the commmissioner of revenue in Virginia, or on the land books in the counties in West Virginia, in which a portion of said grant was situate. They were fully cognizant meanwhile with the persistent efforts of both States to make all real estate within their borders pay its just proportion of the revenue necessary to administer the government, but they, and each of them, stood si-

page 109.] lently by for many long years and neglected and refused to report for taxation the lands claimed by them, or to pay any taxes thereon, except a pittance once in a great while.

This defendant further avers that those claiming under said John Peter Dumas, trustee, caused said land to be re-surveyed and located, and their boundary identified as hereinbefore alleged, and no one or more of the several persons claiming under the said Robert Morris, or under the said Dumas, trustee, claimed any land to the west of said line so located until about 1894 when the said Henry C. King appeared in the country and, for the first time, set up the claim that the said land was not properly located, and that all the lines, except the first one, should be run and located wholly by course and distance to the utter disregard of all the natural and fixed monuments established by and called for by said James Taylor.

Those under whom said King now claims said land, and the right to locate it by course and distance, had knowledge all the while that the Commonwealth of Virginia and afterwards the State of West Virginia, had been in good faith selling and granting to innocent purchasers, for valuable consideration, sundry portions of land to the west of said western line, as so located and now embraced in the lines as set forth in the decree of the 30th. of September, 1897, and claimed by the said Henry C. King to be the true and correct lines of the said Morris grant, and that such grantees were entering into the actual pos-

session of such portions so granted, and were not only paying taxes thereon in good faith each year, but were expending money and labor thereon in the improvement, clearing and settlement of the same, and they stood silently by without protest and suffered such sales and expenditures, and these defendants are advised that the said Henry C. King is now estopped and precluded by such conduct from claiming any land to the west of said line as so located from the Race fork and Knox creek to mouth of Gilberts creek, especially any portions
page 110.] which have been disposed of by said States, and this defendant pleads and relies upon such conduct and the above facts and circumstances in bar of the alleged right of said King to run said line by course and distance alone, or the right to embrace any land of said survey lying to the west of said line as so located.

This defendant avers that it, and those under whom it holds its lands hereinafter mentioned and described, has taken and now claims the benefit of the forfeiture and escheat of any and all of *their* titles or colors of title, if any, to its said lands, or any of them.

This defendant avers that the William McCleary grant of 100,000 acres, and the John Green grant of 84,000 acres, and the George Keith Taylor grant of 213,000 acres have been forfeited to the State of West Virginia for non-entry upon the land books, and for the non-payment of taxes thereon by the claimants thereof, and such title has inured to the benefit of this defendant so far as any of its lands may be situate within any of said grants.

This defendant is seized and possessed of one tract of 120 acres, situate on Laurel branch of Guyandotte river and Barneys branch of Island creek in Logan county, originally granted by the State of West Virginia, by U. B. Buskirk, commissioner of school lands, to Jennie Lawson by deed dated January 1, 1892, and described as a tract of 111 acres, and conveyed by Jennie Lawson, widow, to Alfred Buskirk, January 23, 1892, and one-half undivided interest thereof conveyed by Alfred Buskirk

and wife to U. B. Buskirk the 5th. day of April 1892; and the remaining one-half conveyed to said U. B. Buskirk by S. P. Kelley, special commissioner, by deed dated September 19, 1894, and conveyed by U. B. Buskirk to Z. T. Vinson, Receiver, by deed dated March 18, 1897, and conveyed by Z. T. Vinson, Receiver, to Jeff Newberry by deed dated July 18, 1897, and by Jeff Newberry to Guyan Mercantile Company by deed dated August 9, 1897, and by the Guyan Mercantile Company and page 111.] Jeff Newberry and wife conveyed to this defendant July 11, 1899. Copies of which deeds and muniments of title will be filed herewith as part hereof.

Also one other tract, containing 480 acres, situate in Logan county on the Guyandotte river and Island creek. This tract is made up of a part of a tract of 540 acres granted by the Commonwealth of Virginia to Anthony Lawson pursuant to survey made November 5, 1857, (see surveyor's Book B. page 479; see also Grant Book No. 4, page 413 Land Office, Richmond, Virginia); this tract was conveyed by Anthony Lawson to Eli Gore, Dr. by deed dated December 8, 1889; and the whole of a tract of 317 acres, situate on Island creek, and regularly granted to Eli Gore, Sr., by L. D. Chambers, commissioner of school lands, by deed dated March 29, 1883; and the latter and a portion of the former were devised by Eli Gore, Sr., by his last will and testament to C. H. and Eli Gore, Jr., and was conveyed by the latter and their wives to this defendant.

Also two other tracts of 80 1/16 and 21¾ acres situate on Island creek, and mentioned and described in a certain deed from George Steele, Jr., and wife, to this defendant bearing date the 4th. day of August, 1899.

These tracts embrace a part of a tract of 72 acres on Main Island creek and Barneys branch granted by the Commonwealth of Virginia to Ralph Steele and surveyed January 22, 1852, Book B, page 264, Grant Book No. 4, page 52; a part of a 15 acre tract granted to Peter C. Dingess by the Commonwealth of Virginia, and conveyed by Dingess to Humphrey Trent by deed the record of which is now destroyed, and by the latter to Ralph

Steel, February 4, 1854, and conveyed by the latter to George Steele and Sally, his wife, by deed dated February 2, 1871; and a part of tract conveyed to George Steele, Sr., by B. B. Justice by deed dated April 10, 1875, and by another deed of the same date; conveyed by George Steele to George Steele, Jr., November 16, 1882.

page 112.] And a part of a tract regularly granted by the commissioner of school lands, L. D. Chambers, to George Steele, Sr., and others, 32½ acres of which was granted by George Steele, Sr., to George Steele, Jr., and part of a tract of 150 acres regularly granted by the State of West Virginia by L. D. Chambers, Commissioner of school lands, to George Steele, Jr., May 15, 1883.

Each and all of the foregoing four tracts now owned by this defendant are situate within the William McCleary survey and within the interlock therewith created by the Sell lines of the Robert Morris grant. Duly certified copies of all patents, deeds and other muniments of title to each of said tracts will in due time be filed herewith as part hereof.

All taxes charged or chargeable upon said tracts of land, and of the several tracts or parcels of which they are composed, have been regularly assessed to and paid by the respective owners thereof for the time being for each and every year since the emanation of the title to each parcel thereof from the Commonwealth of Virginia, or from the State West Virginia, to the present time, and none of said tracts are delinquent or forfeited for non-payment of taxes charged or chargeable thereon.

This defendant avers that he, and those under whom he holds said lands, have had the actual, open, exclusive and continuous possession of each and every of said parcels of land to the full extent of the bounds thereof, from the emanation of the title to each tract, piece and parcel thereof continuously to the present time; and he is advised that his title to said lands is valid and indefeasible, and that all other titles, or colors of title, if any, to said land, or any part of them, have inured and been transferred to this defendant, or to those under whom he holds,

by the statute of limitations arising on the adversary possession continuously for a period of ten years, and by the forfeiture and escheat of all other titles or colors of title, and he relies upon its adversary possession in bar of any claim of the said Henry C. King, as well as any claim of the State of West Virginia.

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This defendant avers that while its said lands are within what are known as the Sell lines of the Morris survey, which lines were set out particularly in the decree of the 30th. of September, 1897, in this cause, yet, as a matter of fact, said lands are not within the Morris grant, when properly located, but lie to the west and wholly *byond* said grant.

And he denies that he is bound in any way by said decree of the 30th. of September, 1897, or by the said Sell survey and location.

He therefore prays that this his answer, may be filed, and that the court will hear, try and determine all questions of forfeiture, escheat, title, possession, boundary and conflict of claims that may arise upon this answer, or otherwise in this cause; and that it may be adjudged that the lands of this defendant are not within said Morris grant, or, if in it, that the forfeiure of said Morris grant has inured to its benefit, and that it has taken the benefit of the escheat and forfeiture of any other title, or colors of title, to his said lands, and that he, and those under whom he claims and holds, have had adversary possession for ten years, and has thereby barred and transferred all other claims and colors of title to its said lands, and for such other, further and general relief as the court may see fit to grant.

CHAS. L. TRACEY

By Campbell, Holt & Campbell.

page 114.] ANSWER OF KING TO THE ANSWER OF C. L. TRACY.

(Filed Mar. 16, 1903.)

IN THE CIRCUIT COURT OF WEST VIRGINIA,

COUNTY OF CABELL.

State of West Virginia
vs.
Henry C. King, and Others.

ANSWER of Henry C. King to bill of complaint filed against him the above entitled case by Charles L. Tracy, which bill is by him improperly styled an answer to the original and five amended bill of the State of West Virginia, herein.

To the Honorable E. S. Doolittle, Judge of said court:

Now comes the defendant Henry C. King and not waiving his demurred to the said bill of complaint of the said Charles L. Tracy, but relying and insisting thereon, for answer to said bill of complaint or to so much thereof as he deems it material to answer, says:

I. That this defendant admits that in the proceedings in which Robert E. Randall, trustee, redeemed the said 500,000 acre grant in the circuit court of Wyoming county, the commissioner to whom said cause was referred first reported the amount of taxes upon said land with interest thereon at 12 per cent per annum at about $150,000.00, but if the complainant had desired to state the real truth about the matter, he would have further stated in his said bill that said reference was made prior to the filing of Randall's petition, and that the taxes and interest were computed, not upon the area within the State of

West Virginia, but upon the whole acreage of 500,000 acres; and not for the period for which taxes were properly chargeable, but for every year from 1839 to date, whereas the taxes were properly chargeable only from the year 1875, if properly chargeable at all; and this defendant avers, and the complainant

page 115.] and his counsel should know, that it was in recognition of the fact and not in acknowledgment of the transfer of the title to any part of said land to junior claimants, that the report of said commissioner was, upon exceptions by said Randall, and upon proof of payment of taxes up to 1875, overruled as to the amount of taxes, and the amount due ascertained by the court to be only $8,000.00. And this defendant denies that any part of said tract of land had by the constitution or otherwise been transferred to or vested in any junior claimant, or that Randall, trustee, acknowledged that it had been, and denies that he redeemed but a small part of said grant, and avers that he paid all the taxes that were chargeble upon all of said grant that lies in said State, being more than 300,000 acres, and more taxes than were justly payable thereon, and redeemed all of said land.

II. That this defendant denies that the predecessors of said Robert E. Randall, trustee, or any other person ever caused said Morris grant to be located on the ground whereby the same was ascertained to contain but 111,000 acres, or located the western boundary of the same as running from a south-west corner or any other point on Race fork of Knox creek in a north-east or any other direction to three sugar trees or to any other point or object twenty poles below the mounth of Gilbert creek, or elsewhere in the neighborhood of what is now known as Gilbert creek; and denies that the said Robert E. Randall or any other person under whom this defendant claims ever acknowledged any such location of said grant as correct; and avers that the said Randall and his successors and predecessors in interest by entering said land upon the land books for the full amount of 500,000 acres, and paying taxes on that quantity, and by bringing actions against occupants of said land far to the west of

Gilbert creek, repudiated and disowned any such location as being correct. And denies that said Randall, in his redemption of said grant, abandoned or could abandon any land west of Gilbert creek or else where to the adverse claimants or otherwise, and avers that he paid the taxes on and redeemed all said tract, being more than 300,000 acres, lying in West Virginia.

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III. That this defendant is informed and avers that if James Swan in 1830, executed any deed to Samuel Allison, the title to the portion of said 500,000 acre grant that then lay in Virginia, had previously been forfeited to and was then vested in the Commonwealth and did not pass by such deed to said Allison, and said Comomnwealth was not thereby divested of title; and he further avers that such deed, if made was not intended as an absolute conveyance, but was in fact a trust accompanied by a defeasance, and that said Allison was a creditor and not a purchaser for value, the said Swan retaining the real ownership of said land, subject to the forfeiture to the Commonwealth, and such real interest as said Allison had became vested in and represented by said Dumas, trustee, for such creditors, as this defendant is advised; and if not, then the same has pessed to this defendant through the chain of title set out in his answer to the bill of the State herein. And this defendant is further advised and avers that all question of title between the State and all persons claiming under said Allison, including this defendant, has been finally adjudicated and settled herein in favor of this defendant. This defendant denies that the title to said land or interest remained vested in the Commonwealth after the act of March 15th, 1838, and aver that the same passed thereby to said Dumas, trustee, and denies that the same ever became vested in the State of West Virginia, or ever passed to any of the grantees of said State.

IV. That this defendant admits that on the 29th, day of September, 1846, Dumas, trustee, coveyed to John Joseph Marie

Schmidt Thornfeld 300,000 acres to be selected out of the said 500,000 acres, subject to a vendor's lien thereon,
page 117.] which land was afterwards conveyed by said Thornfeld to Serecourt and Maupertuis, and later, as decreed by the circuit court of Kanawha County, became vested in Maupertuis alone, subject to said vendor's lien; but this defendant denies that said 300,000 acres consumed or consumes said entire tract.

V. That this defendant has no knowledge whether or not any proceedings were ever instituted by or before one Isaac Morgan, escheator, for the escheat of said Morris grant, or any part thereof, for alienage as set out in the said bill or otherwise, but he says that if any such proceedings was ever had, the same was unauthorized and illegal and neither passed any title to the Commonweaith of Virginia or to any person nor deprived the owners of said grant of title thereto; and further says that said grant was not subject to escheat for a lienage or for any other cause, nor was such proceedings, if and was had, directed against the true owners of said grant, but if any title passed by any such proceedings, not only is the State estopped by subsequent receipt of taxes thereon from asserting title thereto, but the same was afterwards released to Robert E. Randall, trustee, by the State of West Virginia, and never vested in said complainant or in any person under whom it claims.

VI. That this defendant for answer to so much of said bill as relates to the undivided three-fourths of said Morris grant at one time held by the Pittsburg National Bank of Commerce, refers to and adopts as part hereof that portion of his answer to the bill of C. W. Campbell, et als, relating to that subject, particularly paragraph XV thereof.

VII. This defendant denies that any pretended proceedings in escheat had any legal effect upon the title to said 300,00 acres, denies that the deed from Reed, trustee, under which this defendant claims did not pass title to said 300,000
page 118.] acres, and avers that said deed and sale were made by authority of an order of court in a cause in

which Serecourt and Maupertuis, the grantees of said Thornfeld were parties, and in which the said Maupertuis was adjudged, as aforesaid, to be the owner of said land, subject to the trustee's vendor's lien, which order of sale was made by and with the consent of said Maupertuis.

VIII. That this defendant denies that the title to said 300,000 acres or to any part of said Morris grant ever passed to the Commonwealth of Virginia by virtue of any sale thereof for non-payment of taxes assessed in the name of the Virginia Company Guyandotte, because said Virginia Company Guyandotte never had any legal existence, and never any title to said land, and for other reasons, appearing from the record of the pretended assessment and sale; but were this otherwise and any title had passed or did pass thereby, then the same was revested in Randall, trustee, by the redemption aforesaid in 1883, by which redemption the State and consequently all others were and are estopped from asserting title in or under the State.

IX. That the circuit court of Logan county is and at the time of the institution of the suit of Claude Bernard against Theodore Dallard et als. was a court of general jurisdiction, and it appears that at least Maupertuis and Serecourt who, the complainants says, were the owners of the legal title to said 300,000 acres, were before the court, and it is not competent for the complainant herein, who is a stranger to the cause, the land and the parties, to questions the regularity of the proceedings by which the court ordered the land to be sold; but this defendant is advised that in as much as the Virginia Company Guyandotte, had no interest in said land it was neither a necessary or proper party to said suit.

X. That this defendant avers that the lien for the purchase money reserved to the Swan trustee by the deed to Thornfeld in 1846 was foreclosed by the sale to Armstrong and the deed to LeMoyne; but were it not so, this defendant is not aware of any principle of law whereby the complainant herein can interpose the bar of the statute

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of limitations between and in behalf of strangers, who do not themselves choose to rely upon it.

XI. That defendant is advised that it is immaterial whether the circuit court of the United States for the district of West Virginia or the circuit court of Kanawha county had jurisdiction of the suits affecting said Swan Estate, one of them at least had jurisdiction, and the same action was taken in each court, and the order at one time entered requiring a public sale of said land to be made was subsequently set aside, but this defendant is advised and avers that no order of sale was necessary to authorize said trustee to sell and convey said land; and he further avers that all question of this defendant's title has been finally adjudicated and settled herein in favor of this defendant.

XII. That this defendant denies that no person claiming under said Robert Morris ever took actual or physical possession of said 500,000 acre grant or any part thereof at any time from 1795 to the present time, and avers that he himself soon after his purchase of said land, took and has retained actual possession of all said land, except so much as was in the actual adverse possession of other persons, which was not the case with any of the land claimed by the complainant; and denies that this defendant or those under whom he claims has or ever have refused to enter said land upon the land books or to pay the taxes thereon, but on the contrary the predecessors in title of this defendant had said land entered upon the land books for all but a few years up to 1883, and paid all taxes thereon not remitted by law, as will hereinafter more fully appear; and no effort was ever made to collect any taxes upon said land that was not successful, whereas the persistent efforts of this defendant to pay taxes on said land have for the past ten years been frustrated by the representatives of the State and

page 120.] interference of the agents and attorneys of the complainant herein and others.

XIII. That this defendant denies, as he hereinbefore hath done, that John Peter Dumas ever located the boundary of

said grant as contended by the complainant, and denies that this defendant is the first one to claim any land west of Gilbert creek and avers that every predecessor of this defendant claimed said grant as extending beyond Gilbert creek, and never one of them claimed it as being limited or in any way bounded by the creek now known as Gilbert creek.

XIV. This defendant denies that those under whom he claim had any knowledge that either the State of Virginia or of West Virginia was granting or attempting to grant or convey to any innocent or other purchaser any laid west of said Gilbert's creek, and within the boundary claimed by this defendant and set out in the decree of September 30th, 1897, and denies that any such persons were innocent purchasers. And defendant avers that both said States did in fact issue many pretended grants within said boundary, but neither the State nor the grantees in such pretended grants took any account whatever of any boundaries, and laid such grants indiscriminately over said entire 500,000 acre grant both east and west of what the complainant is pleased to term the "western boundary", at Gilbert creek.

XV. That it may be true that some of the persons claiming grants for portions of this defendant's land junior to the said grant to Robert Morris did take possession of such grants, but this defendant is advised that whether they did or not does not concern the complainant herein nor confer upon him any right whatever or cause of complaint against this defendant, none of the persons under whom this complainant claims ever having taken or held any possession of the land claimed by him in his said bill except for a short time and for the purpose of stripping the same of great quantities of valuable timber, and this defendant denies that said complainant or those under whom he claims ever expended any money or labor whatever in the improvement of said land.

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XVI. That this defendant admits that the John Green 84,000 acre grant and the George Keith Taylor 213,000 acre grant have been forfeited to the State of Virginia, but denies

that the complainant has derived any title or benefit whatever therefrom.

XVII. This defendant upon information and belief denies that the said complainant is seized or possessed of the land claimed by him in his said bill, and denies that the said complainant or any one under whom he claims title has ever had the actual, continuous, exclusive or other possession of said tract of land to the extent of the bounds thereof from the time of the emanation of the pretended title thereto to the time of the filing of said bill, or ever had any possession whatever of any of said land; and denies that said complainant has any valid title or claim whatever to said tract of land or any part thereof by his said pretended grants and conveyances thereof or by the statute of limitations or by escheat or forfeiture or otherwise.

XVIII. That this defendant denies that the said tracts of land claimed by said complainant mentioned in his said bill are outside of the boundary of said Morris grant when properly located, and avers that the same are entirely within the true boundaries of said grant.

XIX. And this defendant for further and fuller answer unto said bill (miscalled an answer), and further showing why the relief therein prayed for should not be had doth say:

That this defendant *is* the legal and equitable owner of all the land described in his amended petition, including all the land embraced in the several tracts mentioned in the said bill, and derives title thereto in the manner set out and shown in this defendant's answer to the bill and amended bills of the State filed herein, to which answer reference is hereby made and all the allegations of which concerning the derivation

page 122.] of title are hereby adopted and made part hereof.

XX. That said Morris grant contains within the boundaries thereof as surveyed by said W. D. Sell and established by said decree of September 30, 1897, only about 415,000 acres of land, but the said grant was entered upon the land books of Virginia for the proper counties at 500,000 acres from 1796 to 1811 inclusive and the taxes thereon for those

years were paid by said James Swan. For those years the taxes were high, but for the subsequent time up to 1838, when the title to said land was vested in Dumas, Trustee, by the act aforesaid, during which time the title became vested in said Literary Fund, the taxes were trifling, and the amount remitted by said act was little more than two hundred dollars. After the passage of said act the said 500,000 acres were charged upon the land books of Russell county up to and including the year 1843, and in 1847 was entered upon the land books of Logan county in parcels of 200,000 acres and 300,000 acres, and charged with the back taxes for 1844, 1845 and 1846, all which taxes were paid. Said land continued upon the land books of said county up to 1859 when said 200,000 was transmitted and entered upon the land books of McDowell county and was there charged with taxes upon the land books up to and including the year 1869; but how long the remaining 200,000 acres continued upon the land books of said Logan county this defendant is unable to state because of loss of such books for several years after 1859, but the taxes on said land were paid by redemption in 1855, and this defendant believes and avers that all the taxes thereafter up to and subsequent to the formation of the State of West Virginia were paid. See certificates of the auditor Nos. 1 to 7, filed herewith.

XXI. That after the formation of said State of West Virginia and in 1869 the said Robert E. Randall, trustee, caused said 200,000 acres of said Morris grant to be entered upon the land books of Wyoming county, and the heirs of said Maupertuis at the same time caused said 300,000 acres thereof to be entered upon the same books in their name. See auditor's certificate No. 8 filed herewith. In 1873 said Anthony Lawson caused the interest he claimed to be entered upon the land books of Logan county and charged with taxes back to 1865 at 375,000 acres, upon which amount he paid taxes for thirteen years before the same was reduced to 100,000 acres. See auditor's certificate No. 9 filed herewith. There was about 300,000 acres of said Morris grant

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situate in said State, and this defendant's grantors were contributing to the public revenues taxes on 875,000 acres of it, 575,000 acres more than lay in the State.

XXII. That in 1873 said 300.000 acres was sold to the State for the delinquent taxes previously assessed thereon and on the 6th day of April, 1874, and within one year after such sale the same was redeemed by Randall, trustee, by paying to the auditor the sum of $8,434.15, see certificate of redemption No. 10 filed herewith, and the same having been again sold to the State for the taxes thereafter assessed, and said 200,000 acres having been also sold, the commissioner of school lands instituted the proceedings heretofore mentioned in the circuit court of said Wyoming county in which preceeding said Randall, trustee, as the owner of 200,000 acres of said tract and mortgage of 300,000 acres thereof, was upon his petition, permitted to redeem the same, which he did on the 10th day of April, 1883 by the payment of $8,000.00 into court, that being adjudged to be the amount of taxes, interest and costs due thereon under the said claim of Randall and Maupertuis, and the said court that day entered its decree declaring that the same was by him redeemed, and all title of the said State thereto released and said land exonerated from back taxes. A copy of said decree marked "Redemption 1883" is filed herewith and made part hereof. The said Lawson and his successors in interest, claimants of part of said Morris grant, and under whom this defendant claims, having at the time paid to the State more taxes than the

page 124.] State was entitled to demand upon said grant, the said Randall, by said two payments alone, made a gratuity of $16,434.15 to said State towards keeping peace and order among the complainant's grantors.

XXIII. That said decree directed to the clerk of said circuit court to certify a copy of said decree to the auditor of said State and also to the assessor of the proper assessment districts, in order that the said land be again charged with taxes, and the said clerk did certify said decree to said auditor on or about the 16th. day of June, 1883, but whether he certified the same to the

assessor or not this defendant is not informed, but he is advised that it is immaterial whether he did or not, as the assessors were not at that time charged with the duty of entering land on the land books and had no authority to do so. This defendant is advised that it was also the statutory duty of the clerk of said court to certify to the clerks of the county courts of said Wyoming, Logan, and McDowell counties copies or abstracts of said decree, and of the auditor, to whom said decree was certified by the clerk of said circuit court as aforesaid, also to notify the said clerks of said county courts of the said decree, in order that the said clerks, who were the legal custodians of the land books of their said counties, should re-enter said land upon the said land books and charge the same with taxes, as they were required by law to do, the performance of any or all which duties the said Randall, trustee, could neither compel, aid, nor prevent; and if any of said duties were not performed and said land not re-entered upon the land books and charged with taxes, such failure and omission was the fault and through the default and neglect of the said State of West Virginia and her officers and agents charged with the duties aforesaid, and chosen to perform those duties in part by those under whom complainant claims and in whose choice or election this defendant and those under whom he claims had no voice or part, and who did all that was reasonably in their power to

page 125.] have said land re-entered and charged with taxes, and who were always willing to pay any taxes lawfully chargeable upon said land; wherefore, as this defendant is advised, no claim of forfeiture of said land can be maintained by or on behalf of said State or of said complainant.

XXIV. That this defendant is advised and charges that no report of the alleged ommission of said land from the land books was made to the auditor of said State, with all or any of the facts in relation thereto, as is required by statute, nor was any such report filed in the office of the said Auditor, nor recorded in any book kept by him, nor has the auditor at any time certified the said land to the commissioner of school lands of either

of said counties, nor has any commissioner of school lands of any county certified the same to the circuit court of such county in the manner provided by law, nor have any of the acts and things required by law of the various State or county officers in order to constitute a forfeiture under the terms of the statute, been done or observed, nor has any record of such omission of said lands from the land books, or any judicial determination of or inquiry into the matter, even been made, nor any forfeiture ever been adjudged, determined or declared by any tribunal or any proceeding for the purpose.

XXV. That the auditor of said State is required by statute to keep in his office a record of all forfeited real estate that shall come to his knowledge, in which shall be shown the name of the former owner or supposed owner of such land, the quantity or supposed quantity, or other description thereof, for what years the owner was not charged with taxes and when the real estate became forfeited, and said statute makes it the duty of the clerk of the county courts of the various counties, and who are the custodians of the land books, to certify to the auditor the omission of land from the land books;

page 126.] and defendant avers that such a record is, and ever since the year 1883 and long prior thereto, has been, kept by said auditor as so required of him by law, and that there is no entry or mention of or reference to the said land claimed by this defendant or any part thereof, upon said record nor in the office of said auditor; nor is there any record of forfeiture, or pretended forfeiture, of said land, or any part thereof, since 1883, in any office or place, nor does the said land appear upon the auditor's record of delinquent lands, as will appear from auditor's certificate "H. C. K. 18", filed herein. And this defendant says that the object of such record is, among other things, to afford notice to the world of the land forfeited or claimed by said State as a forfeiture, and to warn purchasers and encumbrancers of the claims of said State, and defendant says that the said State and all persons claiming under it, are bound and estopped by said record; and defendant

further says that when he purchased said land he did so in good faith and for a valuable consideration, equal to more than three hundred thousand dollars, and in total ignorance and without notice or suspicion that said land, or any part thereof, or any interest therein, was claimed or alleged or supposed or pretended to be forfeited, but believing that he acquired by his said purchase a perfect, complete and indefeasible, legal and equitable title thereto, and to all thereof, except such parts as might have been lost by adverse possession under the statute of limitations, which do not embrace any of the lands claimed by the complainant, relying upon the fact that the said land for a long time had been a trust estate under the control of said courts, and had been but a short time before defendant's purchase sold by their orders to defendant's grantor, and relying also upon the failure of the public records to disclose any defect in the title of defendant's grantors to said land; and as soon as defendant discovered that said land was claimed to be forfeited he made every effort and offer and has been at all times willing and able to pay and settle
page 127.] with said State and her officers for any taxes, if any, that should be or ought to have been charged against said land and paid by him or his predecessors.

XXVI. That in 1893, the said State of West Virginia brought a suit in the circuit court for Logan County, entitled State of West Virginia vs. LeMoyne, et als. for the purpose of subjecting said 500,000 acre grant to sale as forfeited, (see page 100 of the printed record on appeal) John A. Sheppard, Esq., appearing for the State, and this defendant appeared by his counsel and avowed his desire and purpose to pay any taxes that might be chargeable upon said land, and be relieved from all claim of forfeiture; whereupon, in order, as this defendant believes and charges, to prevent the payment of such taxes the said State caused said suit to be dismissed (page 116 of printed record, but later upon the discovery by her said counsel that the above entitled suit had subsequently been brought in another court and under the control of other counsel, the said Shep-

pard caused the said suit in Logan county to be reinstated upon the docket (page 117 of printed record), and at the next ensuing term of said circuit court in Wyoming county came into said court and endeavored to procure a dismissal of said cause pending therein.

XXVII. That this defendant was ready at the first term of said court in Wyoming county after this suit was brought, to file his answer thereto and to offer to pay, and to pay, any taxes that might be justly due from him upon said land, but the said Sheppard, attorney for the State in Logan county as aforesaid and others acting for him, failing to procure a dismissal of said suit, raised an objection to the process or some proceeding as to the "unknown heirs" of certain of this defendant's grantors who had parted with title during their lifetime, and induced the State by her counsel, to go back to rules for amendment, against the protest of this defendant who had the right and was willing to pay the taxes on said land without further amendment or the presence of other parties. And by like objection to subsequent bills and proceedings and against like protestations of this defendant's willingness to pay said taxes, said cause was protracted through more than two years and the filing of four amended bills before the same was in condition for this defendant to answer.

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XXVIII. That said Sheppard was the duly authorized attorney of the State of West Virginia and this defendant is advised that the said State and the complainant herein, who claim some benefit or advantage from this defendant's non-payment of taxes, are bound by the actions of said attorney and estopped from claiming any advantage whatever from the failure of this defendant to pay the taxes upon the land claimed by him, as he offered and was ready to do in 1893, and at all times thereafter.

XXIX. That the said complainant was not made a party to this suit by the fifth amended bill filed by the State of West Virginia herein, nor by any other pleading, process or proceeding, and said bill states no cause of complaint against said com-

plainant, and asks no relief against him, and said complainant was not required to appear in said cause but did so voluntarily and upon his own motion, and this defendant is advised that said complainant is bound and concluded by the decree of September 30th. 1897, rendered in the above entitled cause to the extent that the same was affirmed by the Supreme Court of Appeals of West Virginia upon the appeal of said State from said decree and is estopped from questioning any matters adjudged therein.

XXX. That each and all the pretended patents from the States of Virginia or West Virginia and pretended sales by the commissioner of school lands of Logan county under which the complainant claims the several tracts of land mentioned in his bill of complaint are null and void and give to him no title or any right whatever; because at the time said pretended patents were issued and said sale purporting to grant the land therein described the same had already been granted to this defendant's predecessors in title and was then lawfully held by

page 129.] them, and neither of said States, nor any officer thereof, had any lawful power or authority to sell or grant the same or any part thereof, or to attempt to do so, and all such attempts were unlawful, and all proceedings therefor and all apparent or pretended sales, deeds or grants therein or thereunder were and are null and void.

XXXI. That this defendant is not informed whether or not the said complainant and those under whom he claims or any of them have paid all or any taxes charged or chargeable upon said land and therefore denies that any such taxes have been paid, and requires proof of such payment, if the same be held to be material.

XXXII. This defendant in further denial of the allegations of said bill and in further defense against the same says:

That the title to said Morris grant under which this defendant claims is not forfeited or vested in the State of Wes Virginia, or in the said complainant, or in any other person but this defendant, except the portion thereof conveyed by this defendant;

and this defendant is advised and doth claim and contend and will maintain that the provisions of the constitution of the State of West Virginia and of any statutes thereof which attempt by their own operation irredeemably to forfeit land for the non-assessment of taxes thereon for the period of five years or any other time, or which attempt or purport to transfer to any other person the title to such land, have no proper application to the land claimed by this defendant; but that if such provisions or any of them do apply, by their terms, to the land claimed by this defendant, so far said constitution and statutes of said State, and as well the statute under which this proceeding is instituted, are in contravention of the Constitution of the United States and are null and void; and this defendant

page 130.] invokes the protection of, and relies upon the said Constitution of the United States.

And this defendant further says that this court is without jurisdiction to entertain the said bill of this proceeding.

WHEREFORE this defendant prays that the said bill of complaint of the said Charles L. Tracey be dismissed and that this *defendany* go hence with his costs.

HENRY C. KING
By Counsel.

MAYNARD F. STILES,
Solicitor.

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page 131.] ANSWER OF GRAYTON WATER WORKS AND IMPROVEMENT CO. & GRAYTON MINING CO.
(Filed July 12, 1901.)

IN THE CIRCUIT COURT OF CABELL COUNTY. JULY TERM, 1901.

State of West Virginia
vs.) *In Chancery*
Henry C. King, et al.

The joint and separate answer of the Grayton Mining Com-

pany an the Grayton Water Works & Improvement Company, corporations organized and existing under the laws of West Virginia, to the Original and five Amended Bills filed in the the above cause, or to so much and such parts thereof as they are advised it is material they should answer, answer and say as follows:

It may be true, as alleged in said bills, that on the 23rd. day of June, 1795, the Commonwealth of Virginia issued to Robert Morris, assignee of Wilson Carey Nicholas, letters patent purporting to convey unto him a certain boundary of land therein described by metes and bounds, and described as containing $500,000 acres, and now situate in the States of Virginia, West Virginia and Kentucky, but the greater portion thereof in the State of West Virginia; but they deny that the boundary of land so graned and therein described, contains 500,000 acres, but, on the contrary aver that there was and is not but 111,000 acres thereby granted and embraced within the lines and abuttals given in said patent; but these defendants deny the issuance and delivery of such patent, and call for strict proof thereof.

It may also be true, as alleged in said bills, that on the 16th. day of November, 1795, the said Robert Morris executed a deed to James Swan purporting to convey said tract of land to him; but these defendants do not admit the execution and delivery of said deed, or the conveyance of said boundary
page 132.] of land to said Swan, but deny the same, and call for strict proof thereof. It may be true that the said James Swan departed this life on the.....day of May, 1831, as alleged in said bills; but these defendants deny the further allegation in said bills that said James Swan upon his death, left said boundary of land to the benefit of his creditors.

They also deny the further allegation in said bills that afterwards, to-wit, in the year 1838, by an act of the General Assembly of Virginia, said tract, among others, was released from forfeiture for taxes.

They also deny that the said tract was vested in John Peter Dumas, as trustee, for the benefit of Swan's creditors, by virtue

of the act of the act of the General Assembly, passed on the 15th. day of March, 1838, or in any other manner vested in said trustee for any purpose whatsoever; and they deny that the said trust was kept up by successive appointments, and the said tract of land at any time vested in Robert E. Randall, as trustee; they admit the further allegation in said bills that for a portion of the time from the year 1838 until the 1881, there was no taxes paid on said land; and it is true also that the title originally granted, if any at all, to the said Robert Morris, such title, after the date of said alleged patent, became forfeited to the State of Virginia, and also to the State of West Virginia.

It is true, as these defendants are informed and *belie* that about the year 1881, an administrative proceeding was instituted by the Commissioner of School Lands of Wyoming county, in the circuit court of said county, the object of which was to sell said tract of land, so forfeited to the State, for the benefit of the school fund. It is also true that the said Robert E. Randall, trustee, filed his petition in said proceeding alleging his ownership as such trustee of 200,000 acres of said Morris grant; and that he held a mortgage lien upon the remain-

page 133.] ing 500,000 acres of said grant, and that as owner of part of said land, and as mortgage creditor of the owners of the residue of said land, he had a right to redeem the same from the alleged forfeiture. And said proceeding was referred to a commissioner to ascertain and report the taxes due and unpaid on said tract of land, and it was ascertained and reported that there was due upon the whole boundary of land unpaid taxes amounting to a large sum of money, to-wit, $150,000.00; but the said Robert E. Randall, trustee, and the circuit court of said county, and the commissioner of school lands of said county, recognizing the fact that the title so forfeited, had been transferred to and vested in certain junior claimants as to divers and sundry portions thereof, under and by virtue of the constitution and laws of the State, and leaving but a small portion of that part of said survey lying in West Virginia, the title *ehereto* still remained in the State, it was esti-

mated that the unpaid taxes on such portions so vested in the State amounted to $8,000.00; and thereupon the said Randall, trustee, paid into court the said last named sum, and he redeemed thereby only those portions, the title whereto then remained in the State, and he did not then and there, or at any other time or place, pay any taxes whatsoever upon any other portions of said land so situate in West Virginia. And these defendants aver that prior to that time, the predecessor of the said Robert E. Randall, trustee, had caused the said Morris grant to be located upon the ground, and it was thereby ascertained that said grant contained only 111,000 acres, and not 500,000 acres; and the western boundary line was located as running from the southwest corner on the Race fork of Knox creek, in the State of Kentucky, in a northeast direction, crossing Knox Creek at about four miles, and Tug fork of Sandy at the mouth of Turkey creek, at about twelve miles, and crossing the dividing ridge between said Tug fork, and crossing Gilberts creek twice to three sugar trees in a little bottom, standing on the bank of the Guyandotte river, twenty poles below the mouth of Gilberts creek. And the said Robert E. Ran-
page 134.] dall recognized that survey as the correct location of said Morris grant, and did not in said alleged redemption, pay any taxes whatsoever upon any land whatsoever lying to the west of said line as so located. And the said Robert E. Randall, trustee, abandoned to all adverse claimants the several portions of said Morris grant, then held by them respectively, and he refused to pay any taxes on such portions.

These defendants are informed, believe and charge that on the 30th. day of August, 1830, the said James Swan executed and delivered a deed, as alleged by the said Henry C. King in his petition and answer, purporting to convey to one Samuel Allison *inter alia*, the said Morris grant and thereby divested himself of all the estate, right, title and interest, both in law and in equity, in and to said boundary of land, and he never thereafter became entitled to any interest or estate in said land, or any title whatsoever. Therefore these defendants aver that the

said tract of land did not pass to the said John Peter Dumas, trustee, under and by virtue of the act of the General Assembly of Virginia, passed on the 15th. day of March, 1838, which purported to vest, by general reference, but without specific mention or description, certain lands of which the said Swan may have died seized by title, legal or equitable.

These defendants further aver that on the 29th. day of September, 1846, the said John Peter Dumas, trustee, executed and delivered a deed purporting to convy to John Joseph Marie Schmidt Thornfeld 300,000 acres out of the alleged Morris grant of 500,000 acres, but reserved a vendor's lien thereon for the sum of $....., and the said Thornfeld on the ..... day of October, 1846, executed and delivered a deed purporting to convey said 300,000 acres to Auguste Marie Francois Novino de Sericourt and Louis Antoine de Maupertuis, managers and legal representatives of the Virginia Company Guyandotte, a corporation under the laws of France; and these defendants *aver* that the 300,000 acres so granted, are consumed by the land described in the aforementioned patent to Robert Morris.

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These defendants further aver that on the 20th. day of April, 1850, Isaac Morgan, then escheator of Logan county, by an inquisition of escheat taken by him as such escheator, commenced, conducted and concluded in the manner provided by statute, before a regular jury of inquisition returned by the sheriff, and duly sworn and empaneled according to law, ascertained, found and determined by such inquisition that the 300,000 acres aforesaid, part of the Morris grant aforesaid, was escheated to the Commonwealth of Virginia, because the title thereto, legal and equitable, was in an alien or aliens and not in a citizen or citizens, or residents of the United States. A copy of such inquisition, duly certified, will be filed herewith as part hereof; and they also aver that at the same time and by the said escheator, the residue of said alleged grant, which said residue was described as containing 200,000 acres, was in like manner escheated to the Commowealth of Virginia, because the owners thereof

were aliens and not citizens or residents of the United States. A copy of said inquisition, duly certified, will in due time be filed herewith as part hereof.

These defendants further aver that the claim of title set up by the said Henry C. King in his petition to three-fourths undivided of the said Morris grant, under and by virtue of a certain quit-claim deed by the Pittsburg National Bank of Commerce to David W. Armstrong, and the deed from said Armstrong to said King, copies of which deeds are filed by the said Henry C. King with his petition, is null and void, because no title was ever vested in the said bank, and because of the allegations and matters of land and fact alleged in that behalf in the answer of C. W. Campbell and others and T. H. Harvey and others, filed in this cause, to which answers these defendants here make reference and adopt said allegations as part and parcel of this answer; and they aver that the allegations and facts therein contained in that behalf, are true.

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These defendants further aver that at the time of the making and delivery of said deed by the said Swan to said Allison, the legal title to said grant had become vested either in the Commonwealth of Virginia or in the President and Directors of the Literary fund by sale of said land in the manner provided by law for the taxes legally assessed thereon in the name of said James Swan, as *averred* by the said Henry C. King, at that time the said James Swan had merely a right of redemption of such portions of said grant as had not under the laws of the State of Virginia, been transferred and vested, on such forfeiture, in junior claimants, and such right of redemption passed to and vested in Samuel Allison, under and by virtue of said deed of the 30th. day of August, 1830. Said sale and purchase by the State as aforesaid, and the forfeiture thereby of the said grant, was never redeemed, or the land released or exonerated therefrom, and such delinquent taxes were never paid by the said James Swan, his heirs, devisees or assigns, and no taxes whatever after the year 1815, were assessed to or paid by said James Swan, his heirs, devisees or assigns; and the said land

was never again entered upon the land books and assessed with taxes after said sale and forfeiture by and in the name of said Swan, his heirs, devisees or assigns; and the title to said land, so acquired at such sale thereafter remained either in the Commonwealth of Virginia or in the President and Directors of the Literary Fund until the formation of the State of West Virginia, except to such portions thereof as were situate in the State of Kentucky, or such portions thereof as were claimed by junior occupants, to whom the title so forfeited was transferred by law, or to such portions thereof as were subsequently granted by said Commonwealth to sundry persons on the formation of the State of West Virginia, the title then remained in either the said Commonwealth or President and Directors of the

page 137.] Literary fund to *to* that portion of said grant embraced in said State of West Virginia, passed to and vested in said State, and it there remains, except to such portions thereof as have been since the 20th. day of June, 1863, granted, sold or conveyed by said State, either by letter patent or by deeds executed on her behalf by the several commissioners of school lands of the several counties where said land is situate.

These defendants therefore insist that said Morris grant did not pass to the said John Peter Dumas, trustee, under said act of the 15th. of March, 1838, because said James Swan was not seized thereof at his death, by title, legal or equitable. But if they be in error in this respect, and if said land did pass to said Dumas, trustee, under said act, then they aver that the said Dumas, trustee, on the 29th. day of September, 1846, had parted with title to 300,000 acres as hereinbefore alleged, and the said 300,000 acres had been escheated as aforesaid to the Commonwealth of Virginia and was not subject to redemption, and said inquisition of escheat was never set aside, vacated or annulled, but remained and now still remains in full force and effect.

These defendants deny that said Henry C. King has any title, right or estate in and to said 300,000 acres, or any right to redeem the same, because from the fact that the same had been

escheated as hereinbefore stated, and because the deed from John R. Reed, trustee, did not in fact convey any title or right to said 300,000 acres because he was not vested with such right or title as would permit him to sell or convey the same and the deed from the Pittsburg National Bank of Commerce hereinbefore mentioned did not pass any title to the said 300,000 acres, because no right or title was vested in said bank. These defendants aver that the title to the 300,000 acres aforesaid was vested in the Commonwealth of Virginia by the inquisition of escheat as aforesaid, but, if these defendants be in error in this respect, the title thereto did vest in said Commonwealth by purchase of said land

page 138.] at a sale thereof made for the non-payment of taxes legally assessed thereon in the name of the Virginia Company Guyandotte, as will appear by reference to the several certificates of the Auditor of Public Accounts of Virginia, which will in due time be filed as part of this answer. Said 300,000 acres was never redeemed from such sales, and no taxes have been paid on said 300,000 acres, or any portion thereof in West Virginia since 1863, by the Virginia Company Guyandotte, or by any one claiming under it or its trustees, except by those to whom said forfeited title has been transferred by patents, deeds, or by the constitution and laws and on such portions so transferred, taxes have been assessed to and paid regularly by such transferees, patentees or grantees claiming under them.

These defendants aver that the title to the said 300,000 acres so vested in Thornfeld, and afterwards in said Sericourt and Maupertuis, trustees for the Virginia Company Guyandotte, did not pass to the said Anthony Lawson under the pretended deed from said James M. Laidley, Special Commissioner, not only for the reasons hereinbefore set out, but also because said 300,000 acres was not decreed to be sold, nor was it in fact sold, nor was it decreed to be conveyed, nor was it in fact conveyed by such Special Commissioner. There was no lien thereon of any character whatsoever in favor of the alleged plaintiff, Claude Bernarde. The said Thornfeld had long prior to said pretended deed parted with his alleged interest in

said 300,000 acres, and the same was held by the said Sericourt and Maupertuis in trust for the Virginia Company Guyandotte as aforesaid, and the said Company was not before said Logan circuit court in said pretended suit as a party or otherwise, and the said Emilie Dumas had no title or interest whatsoever in said 300,000 acres. The said Morris grant was not then held by *moities* and only one moiety thereof is claimed to have been subject to the alleged debt of the said Bernarde, and the other moiety to the cost of suit.

page 139.] These defendants further aver that the lien for the purchase money thereof due from the said Thornfeld to said Dumas, trustee, reserved in a deed of the 27th. of September, 1846, has never been enforced by decree or otherwise in any suit and said mortgage debt for the balance of purchase money, if not long since paid, he has been barred by the statute of limitations for many years, and these defendants plead and rely upon the bar of said statute so far as said mortgage may affect any of their land.

These defendants deny that the circuit court of the United States for the District of West Virginia had any power or jurisdiction in the suits alleged to have been removed thereto, to-wit, the suits of ————————

to direct a sale of said Morris grant, or of any power or interest therein, and the alleged sale thereof made by said J. R. Reed, trustee, to said David W. Armstrong, so far as it depends upon any decree of said court, is void, and such sale is void, because the circuuit court of Kanawha county, if it had jurisdiction over said Morris grant in the suit last above named, which these defendants deny, had directed a public sale of said grant, and said Reed, trustee, had no power to make a private sale, and the decree directing a public sale has never been set aside or annulled.

These defendants aver that neither Wilson Carey Nichols, or Robert Morris, or James Swan, nor the heirs or devisees of either of them, nor the assigns, immediate or remote of either, nor any person claiming immediately under the act of the General Assem-

bly of Virginia, passed on the 15th. day of March, 1838, nor those claiming mediately or immediately under said deed from said Laidley, Special Commissioner, ever took actual or physical possession of said 500,000 acres, or any part thereof, at any time, or for any period from the 23rd. day of June, 1795, to the present time, but they, and each of them, have neglected and refused to pay any taxes which were chanced to be assesed thereon at intervals, or to report said land for the major portion of that time, or to cause the same to be entered on the books of the commissioner of Revenue in Virginia, or on the land books in the counties in West Virginia in which a portion of said grant was situate. They were fully cognizant meanwhile with the persistent efforts of both States to make all real estate within their borders pay its just proportion of the revenue necessary to administer the government, but they, and each of them, stood silently by for many long years and neglected and refused to report for taxation the lands claimed by them, or to pay any taxes thereon, except a pittance once in a great while.

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These defendants further aver that those claiming under said John Peter Dumas, trustee, caused said land to be re-surveyed and located and their boundary identified as hereinbefore alleged, and no one or more of the several persons claiming under the said Robert Morris, or under the said Dumas, trustee, claimed any land to the west of said line so located until about 1894, when the said Henry C. King appeared in the country, and for the first time, set up the claim that said land was not properly located, and that all the lines, except the first one, should be run and located wholly by course and distance, to the utter disregard of all the natural and fixed monuments established by and called for by said James Taylor.

Those under whom said King now claims said land, and the right to locate it by course and distance, had knowledge all the while that the Commonwealth of Virginia, and afterwards the State of West Virginia, had been in good faith selling and grant-

ing to innocent purchasers, for valuable consideration, sundry partions of land to the west of said western line, as so located and now embraced in the lines as set forth in the decree of the 30th. of September, 1897, and claimed by the said Henry C. King to be the true and correct exterior lines of the said Morris grant, and that such grantees were entering into the actual possession of such portions so granted, and were not only paying taxes thereon in good faith each year, but were expending

page 141.] money and labor thereon in the improvement, clearing and settlement of the same, and they stood silently by without protest and suffered such sales and expenditures, and these defendants are advised that the said Henry C. King is now estopped and precluded by such conduct from claiming any land to the west of said line as so located from the Race tork and Knox creek to the mouth of Gilberts creek, especially any portions which has been disposed of by said States, and these defendants plead and rely upon such conduct and the above facts and circumstances in bar of the alleged right of said King to run said line by course and distance alone, or the right to embrace any land of said survey lying to the west of said line so located.

These defendants aver that it, and those under whom they hold their land hereinafter mentioned and described, have taken and now claim the benefit of the forfeiture and escheat of any and all of their titles or colors of title, if any, to their said land, or any of them.

These defendants aver that the William McCleary grant of 100,000 acres, and the John Green grant of 84,000 acres, and the George Keith Taylor grant of 213,000 acres have been forfeited to the State of West Virginia for non-entry upon the land books, and for the non-payment of taxes thereon by the claimants thereof, and such title has enured to the benefit of these defendants so far as any of their lands may be situate within any of said grants.

The defendant, the Grayton Mining *Compann*, a corporation,

avers that it is seized and possessed of an estate in fee in and to a number of tracts of land situate on Tug river, Beech creek, Staffords Branch, Middle Branch and Grants Branch, tributaries of the Tug river, all of which are mentioned and particularly described in that certain deed to this defendant from James O'Keeffe and wife, and Samuel Walton and wife, bearing date the 10th. day of March, 1893, a copy of which is herewith exhibited, marked Exhibit "A". Subject, however, to the exception and reservation mentioned and particularly described in said deed consisting of 767 acres, more or less, and lying upon the river front of said lands. The latter boundary so reserved and excepted vested in fee simple in the defendant, the Grayton Water Works and Improvement Company by virtue of a deed from said James O'Keefe and wife and Samuel Walton and wife bearing date the 10th. day of March, 1893—a copy of which is also filed herewith as part hereof, marked Exhibit "B". These lands were purchased by the said James O'Keefe and said Samuel Walton from the settlers in that section of the country during the years 1889, 1890 and 1891.

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A large portion of the lands owned by the Grayton Mining Company are situate within and are carved out of a grant of 30,000 acres to John Green; the whole of which 30,000 acres was excepted out of the lands described in the amended petition of the defendant Henry C. Kong which he desired to redeem for forfeiture, under the Robert Morris grant aforesaid.

Said lands embrace two surveys of 60 acres each granted by the Commonwealth of Virginia to Alexander Mounts, the 1st of August, 1851, and the 1st. of May, 1855; and a tract of 84 acres granted by the Commonwealth of Virginia to Ephraim Hatfield; a tract of 98 acres granted by the Commonwealth of Virginia to James Lawson in 1848; 180 acres granted by the Commonwealth of Virginia to Ferrell and Murphy; and two tracts of 18 and 70 acres each, granted by the Commonwealth of Virginia to William Mounts; and 75 acres granted to E. Daniels; a tract of 150 acres granted by the Commonwealth of Virginia to Warren Al-

derson; and a tract of 1300 acres granted by the Commonwealth of Virginia to Richard Ratliff; a tract of 289 acres and one of 33 acres granted by the Commonwealth of Virginia to Warren Alderson; a tract of 29 acres granted by the Commonwealth of Virginia to William Mounts in 1858; a tract of 43 acres granted by the Commonwealth of Virginia to William Cline January 1, 1827; and a tract of 74 acres granted by the Commonwealth of Virginia to William Cline, October 8, 1845; a tract of 70 acres granted by the Commonwealth of Virginia to William Mounts the 26th. day of January, 1858; 25 acres granted by the Commonwealth of Virginia to James Lawson, June 26, 1844; 33 acres granted by the Commonwealth of Virginia to Alexander Trent the 3rd. day of July, 1854; and a tract of 59 acres granted by the Commonwealth of Virginia to E. Rutherford May 6, 1856, and all the rest and residue of said boundary of land was regularly granted by the State of West Virginia, by her sundry commissioners of school lands of Logan county, to sundry persons and now vested by mesne conveyances in one or the other of these defendants. While the total acreage as called for in said deed amounts to 6296½ acres, there is in fact, as shown by recent survey, only 584, acres. Copies of all of said patents and proceedings by the Commissioners of school lands, and of all deeds and other muniments of title will in due time be filed herewith as part hereof.

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These defendants severally aver that each of them has had since the 10th. day of March, 1893, the actual, adverse, exclusive and notorious possession of the lands belonging to each by actual residence, by numerous tenants and by cultivation and enclosure continuously from said date to the present time; and the said Samuel Walton and James O'Keefe had had like possession continuously of each tract from the time it was purchased until the conveyance above mentioned, and those from whom they severally purchased said tracts of land had had like possession continuously of each tract from the time of the emanation of the title thereto *caither* from the Commonwealth of Virginia or the State of West Virginia, and all taxes charged or chargeable upon

every part of said lands have been regularly charged and regularly paid each year on each tract or parcel from the emanation of the title thereto from the Commonwealth of Virginia or the State of West Virginia.

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All of these lands lie within the lines set out in the decree of the 30th. of September, 1897, known as the Sell lines of the Morris grant, but no portion of said land is within the true and correct location of said Morris grant.

And they deny that they are bound in any way by said decree of the 30th. of September, 1897, or by the said Sell survey and location.

They therefore pray that this, their answer, may be filed, and that the court will hear, try and determine all questions of forfeiture, escheat, title, possession, boundary and conflict of claims that may arise upon this answer, or otherwise in this cause; and that it may be adjudged that the lands of these defendants are not within said Morris grant, or, if in it, that the forfeiture of said Morris grant has inured to their benefit, and that they have taken the benefit of the escheat and forfeiture of any other title or color of title to their said lands, and that they, and those under whom they claim and hold, have had adversary possession for ten years, and have thereby barred and transfered all other claims and colors of title to their said lands, and for such other, further and general relief as the court may see fit to grant.

GRAYTON MINING COMPANY.

GRAYTON WATER WORKS AND IMPROVEMENT COMPANY

By Campbell, Holt & Campbell, Attys.

page 145.] DEMURRER AND ANSWER OF KING TO ANSWER OF GRAYTON WATER WORKS CO. ET ALS.

(Filed Feb. 12, 1903)

IN THE CIRCUIT COURT OF WEST VIRGINIA FOR THE COUNTY OF CABELL.

State of West Virginia
vs.
Henry C. King, et als.

The demurrer and answer of Henry C. King to a bill of complaint filed against him herein by the Grayton Mining Company and the Grayton Water Works & Improvement Company, corporations organized and existing under the laws of West Virginia, but improperly styled an answer to the original and five amended bills of the State.

To the Honorable E. S. Doolittle, Judge of said Court:

Now comes the defendant, Henry C. King, and for demurrer and answer to the said bill of complaint of the said Grayton Mining Company and the Grayton Water Works & Improvement Company, which is identical in terms as the bill of complaint of The Spruce Coal and Lumber Company, a corporation, against this defendant filed herein, refers to this defendant's demurrer and answer to said latter bill and adopts the same and all the averments, denials and allegations thereof as fully and to the same effect as if the same were here again repeated, reiterated and set out in extenso, and asks that the same be taken and treated as his demurrer and answer to the said bill of complaint of the said Grayton Mining Company and the Grayton Water Works & Improvement Company.

And this defendant prays that the said bill of complaint of the said Grayton Mining Company and the Grayton Water Works

and Improvement Company be dismissed and that this defendant be hence dismissed with his costs.

HENRY C. KING,
By Counsel.

MAYNARD F. STILES,
Solicitor.

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page 146.] ANSWER OF BROCKUNIOR ET ALS.
(Filed July 9, 1901)

IN THE CIRCUIT COURT OF CABELL COUNTY
JULY TERM, 1901.

State of West Virginia,
vs.) *In Chancery*
Henry C. King, et al.

The Separate Answer of C. W. Brockunior J. F. Paull and J. C. Alderson, to the Original and Five Amended Bills Filed in the above cause, or to so much and such parts thereof as they are advised it *it* material they should answer, answer and say as follows:

It may be true, as alleged in said bills, that on the 23rd. day of June, 1795, the Commonwealth of Virginia issued to Robert Morris assignee of Wilson Carey Nicholas, letters patent purporting to convey unto him a certain boundary of land therein described by metes and bounds, and described as containing 500,000 acres, and now situate in the States of Virginia, West Virginia and Kentucky, but the greater portion thereof in the State of West Virginia; but they deny that the boundary of land so granted and therein described, contains 500,000, but, on the contrary, aver that there was and is not but 111,000 acres thereby granted and embraced within the lines and abuttals given in said

patent; but these defendants deny the issuance and delivery of such patent, and call for strict proof thereof.

It may also be true, as alleged in said bills, that on the 16th. day of November, 1795, the said Robert Morris executed a deed to James Swan purporting to convey said tract of land to him; but these defendants do not admit the execution and delivery of said deed, or the conveyance of said boundary of land to said Swan, but deny the same, and call for strict proof thereof. It may be true that the said James Swan departed this life on the ..... day of May, 1831, as alleged in said bills; but these defendants deny the further allegation in said bills that said James Swan, upon his death, left said boundary of land to the benefit of his creditors.

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They also deny the further allegation in said bills, that afterwards, to-wit, in the year 1838, by an act of the General Assembly of Virginia, said tract, among others, was released from forfeiture for taxes.

They also deny that the said tract was vested in John Peter Dumas, as trustee, for the benefit of Swan's creditors, by virtue of the act of the General Assembly passed on the 15th day of March, 1838, or in any other manner vested in said trustee for any purpose whatsoever; and they deny that the said trust was *kept* up by successive appointments, and the said tract of land at any time vested in Robert E. Randall, as trustee. They admit the further allegation in said bills that for a portion of the time from the year 1838 until the year 1881, there was no taxes paid on said land; and it is true also that the title originally granted, if any at all, to the said Robert Morris, such title, after the date of said alleged patent, became forfeited to the State of Virginia, and also to the State of West Virginia.

It is true, as these defendants are informed and believe, that about the year 1881, an administrative proceeding was instituted by the Commissioner of School Lands of Wyoming county, in the circuit court of that county, the object of which was to sell said tract of land as forfeited to the State, for the benefit of the school fund. It is also true that the said Robert E. Randall, trustee, filed

his petition in said proceeding, alleging his ownership as such trustee of 200,000 acres of said Morris grant; and that he held a mortgage lien upon the remaining 300,000 acres of said grant, and that as owner of part of said land, and as mortgage creditor of the owners of the residue of said land, he had a right to redeem the same from the alleged forfeiture. And said proceeding was referred to a Commissioner to ascertain the taxes due and unpaid on the said tract of land; and it was ascertained and reported that there was due upon the whole boundary of land unpaid taxes amounting to a large sum of money, to-wit, $150,000.00 but the said Robert E. Randall, trustee, and the circuit court of said county, recognizing the fact that the title so forfeited, had been transferred to and vested in certain junior claimants as to divers and sundry portions thereof, under and by virtue of the constitution and laws of the State, and leaving but a small portion of that part of said survey lying in West Virginia, the title whereto still remained in the State; it was estimated that the unpaid taxes on such portions so vested in the State amounted to $8,000.00, and thereupon the said Randall, trustee, paid into court the said last named sum, and he redeemed thereby only those portions, the title whereto then remained in the State, and he did not then and there, or at any other time or place, pay any taxes whatsoever upon any other portions of said land so situate in West Virginia. And these defendants aver that prior to that time, the predecessor of the said Robert E. Randall had caused the said Morris grant to be located upon the ground, and it was thereby ascertained that said grant contained only 111,000 acres, and not 500,000 acres, and the western boundary line was located as running from the southwest corner on the Race fork of Knox creek, in the State of Kentucky, in a northeast direction, crossing Knox creek at about four miles, and Tug fork of Sandy at the mouth or Turkey creek at about twelve miles, and crossing the dividing ridge between said Tug fork and crossing Gilberts creek twice to three sugar trees in a little bottom, standing on the bank of the Guyandotte river, twenty poles below the mouth of Gilberts creek. And the said Robert E. Randall

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recognized that survey as the correct location of said Morris grant, and did not in said alleged redemption, pay any taxes whatsoever upon any land whatsoever lying to the west of said line as so located. And the said Robert E. Randall, trustee, abandoned to all adverse claimants the several portions of said Morris grant, then held by them respectively, and he refused to pay any taxes on such portions.

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These defendants are informed, believe and charge that on the 30th. day of August, 1830, the said James Swan executed and delivered a deed, as alleged by the said Henry C. King in his petition and answer, purporting to convey to one Samuel Allison, *inter alia*, the said Morris grant, and thereby divested himself of all the estate, right, title and interest, both in law and in equity, in and to said boundary of land, and he never thereafter became entitled to any interest or estate in said land, or any title whatsoever. Therefore these defendants aver that the said tract of land did not pass to the said John Peter Dumas, trustee, under and by virtue of the act of the General Assembly of Virginia, passed on the 15th. day of March, 1838, which purported to vest, by general reference, but without specific mention or description, certain lands of which the said James Swan may have died seized, by title, legal or equitable.

These defendants further aver that on the 29th. day of September, 1846, the said John Peter Dumas, trustee, executed and delivered a deed purporting to convey to John Joseph Marie Schmidt Thornfeld 300,000 acres out of the alleged Morris grant of 500,000 acres, but reserved a vendor's lien thereon for the sum of $....., and the said Thornfeld on the .... day of October, 1846, executed and delivered a deed purporting to convey said 300,000 acres to Auguste Marie Francois Novino de Sericourt and Louis Antoine de Maupertuis, managers and legal representatives of the Virginia Company Guyandotte, a corporation under the laws of France; and these *defendant* aver that the 300,000 acres so granted, are consumed by the land described in the aforementioned patent to Robert Morris.

These defendants further aver than on the 20th. day of April,

1850, Isaac Morgan, then Escheator of Logan county, by an inquisition of escheat taken by him, as such escheator, commenced, conducted and concluded in the manner provided by statute, before a regular jury of inquisition returned by the sheriff, and duly sworn and empanneled according to law, ascertained, found and determined by such inquisition that the 300,000 acres aforesaid, part of the Morris grant aforesaid, was escheated to the Commonwealth of Virginia, because the title thereto, legal and equitable, was in an alien or aliens, and not in a citizen or citizens or residents of the United States. A copy of such inquisition, duly certified, will be filed herewith as part hereof; and they also aver that at the same time, and by the said escheator, the residue of said alleged grant, which said residue was described as containing 200,000 acres, was in like manner escheated to the Commonwealth of Virginia, because the owners thereof were aliens and not citizens or residents of the United States. A copy of said inquisition duly certified, will in due time be filed herewith as part hereof.

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These defendants further aver that the claim of title set up by the said Henry C. King in his petition, to three-fourths undivided of the said Morris grant, under and by virtue of a certain quit-claim deed by the Pittsburg National Bank of Commerce to David W. Armstrong, and the deed from said Armstrong to said King with his petition, is null and void because no title was ever vested in the said Bank, and because of the allegations and matters of law and fact alleged in that behalf in the answer of C. W. Campbell and others, and T. H. Harvey and others, filel in this cause, to which answer these defendants here made reference and adopts said allegations as part and parcel of this answer; and they aver that the allegations and facts therein contained in that behalf, are true.

These defendants further aver that at the time of the making and delivery of said deed by the said Swan to said Allison, the legal title to said grant had become vested either in the Commonwealth of Virginia or in the President and Directors of the Literary fund, by sale of said land in the manner provided by law

for the taxes legally assessed thereon in the name of said James Swan, as averred by the said Henry C. King, at that time the said James Swan had merely a right of redemption of such portions of said grant as had not under the laws of the State of Virginia, been transferred and vested, on such for-
page 151.] feiture, in junior claimants, and such right of redemption passed to and vested in Samuel Allison under and by virtue of said deed of the 30th. day of August, 1839. Said sale and purchase by the State aforesaid, and the forfeiture thereby of the said grant, was never redeemed, or the land released or exonerated therefrom, and such delinquent taxes were never paid by the said James Swan, his heirs, devisees or assigns; and the said land was never again entered upon the land books and assessed with taxes after said sale and forfeiture by or in the name of said Swan, his heirs, devisees or assigns, and the title to said land, so acquired at such sale, thereafter remained either in the Commonwealth of Virginia or in the President and Directors of the Literary Fund until the formation of the State of West Virginia, except to such portions thereof as were situate in the State of Kentucky, or to such portions thereof as were claimed by junior occupants, to whom the title so forfeited was transferred by law, or to such portions thereof as were subsequently granted by said Commonwealth to sundry persons on the formation of the State of West Virginia, the title then remaining in either the said Commonwealth or President and Directors of the Literary fund, to that portion of said grant embraced in said State of West Virginia, passed to and vested in said State, and it there remains, except to such portions thereof as have been since the 20th. day of June, 1863, granted, sold or conveyed by said State, either by letters patent or by deeds executed on her behalf by the several Commissioners of School Lands of the several counties where said land is situate.

These defendants therefore insist that said Morris grant did not pass to the said John Peter Dumas, trustee, under said act of the 15th. of March, 1838, because said James Swan was not seized thereof at his death, by title, legal or equitable; but, if it be in

error in this respect, and if said land did pass to said Dumas, trustee, under said act, then they aver that the said Dumas trustee, on the 29th. day of September, 1846, had parted with title to 300,000 acres, as hereinbefore alleged, and the said 300,000 acres had been escheated as aforesaid to the Commonwealth of Virginia, and was not subject to redemption, and said inquisition of escheat was never set aside, vacated or annulled, but remained, and now still remains in full force and effect.

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These defendants deny that said Henry C. King has any title, right or estate in or to the said 500,000 acres, or any right to redeem the same, because from the fact that the same had been escheated as hereinbfore stated, and because the deed from John R. Reed, trustee, did not in fact convey any title or right to said 500,000 acres, because he was not vested with such right or title as would permit him to sell or convey the same, and the deed from the Pittsburg National Bank of Commerce, hereinbefore mentioned, did not pass any title to the said 300,000 acres, because no right or title was vested in said Bank. These defendants aver that the title to the 300,000 acres aforesaid was vested in the Commonwealth of Virginia by the inquisition of escheat as aforesaid; but, if these defendants be in error in this respect, the title thereto did vest in said Commonwealth by purchase of said land as a sale thereof made for the non-payment of taxes legally assessed thereon in the name of the Virginia Company Guyandotte, as will appear by reference to the several certificates of the Auditor of Public Accounts of Virginia ,which will in due time be filed as part of this answer. Said 300,000 acres was never redeemed from such sales, and no taxes have been paid on said 300,000 acres, or any portion thereof, in West Virginia, since 1863, by the Virginia Company Guyandotte, or by any one claiming under it or its trustees, except by those to whom said forfeited title has been transferred by patents deeds, or by Constitution and laws, and on such portions so transferred, taxes have been

assessed to and paid regularly by such transferees, patentees or grantees claiming under them.

page 153.] These defendants aver that the title to the said 300,000 acres so vested in Thornfeld, and afterwards in said Sericourt and Maupertuis, trustees for the Virginia Company Guyandotte, did not pass to the said Anthony Lawson under the pretended deed from said James M. Laidley, Special Commissioner, not only for the reasons hereinbefore set out, but also because said 300,000 acres was not decreed to be sold, nor was it decreed to be conveyed, nor was it in fact sold or conveyed by such Special Commissioner. There was no lien thereon of any character whatever in favor of the alleged plaintiff, Claude Bernarde. The said Thornfeld had long prior to said pretended deed parted with his alleged interest in said 300,000 acres, and *the* was held by the said Sericourt and Maupertuis in trust for the Virginia Company Guyandotte as aforesaid, and the said Company was not before Logan circuit court in said pretended suit as a party or otherwise, and the said Emile Dumas had no title or interest whatsoever in said 300,000 acres. The said Morris grant was not then held by moieties, and only moiety thereof is claimed to have been subject to the alleged debt of the said Bernarde, and the other moiety to the cost of suit.

These defendants further aver that the lien for the purchase money thereof due from the said Thornfeld to the said Dumas, trustee, reserved in a deed of the 27th. of September, 1846, has never been enforced by decree or otherwise in any suit, and said mortgage debt for the balance of purchase money, if not long since paid, has been barred by the statute of limitations for many years, and these defendants plead and rely upon the bar of said statute so far as said mortgage may affect any of their lands.

These defendants deny that the circuit court of the United States for the District of West Virginia had any power or jurisdiction in the suit alleged to have been removed thereto, to-wit,

page 154.] the suits of ..... to direct a sale of said Morris grant, or of any part or interest therein, and the alleged sale thereof, made by said

J. R. Reed, trustee, to said David W. Armstrong, so far as it depends upon any decree of said court, is void, and such sale is void because the circuit court of Kanawha county, if it had jurisdiction over said Morris grant in the suit last above named, which these defendants deny, had directed a public sale of this grant, and said Reed, trustee, had no power to make a private sale, and the decree directing a public sale has never been set aside or annulled.

These defendants aver that neither Wilson Carey Nicholas, or Robert Morris, nor James Swan, nor the heirs or devisees of either of them, nor the assigns, mediate or remote, of either, nor any person claiming mediately or immediately under the said act of the General Assembly of Virginia, passed on the 15th. day of March, 1838, nor those claiming mediately or immediately under said deed from said Laidley, Special Commissioner, ever took actual or physical possession of said 500,000 acres, or any part thereof, at any time, or for any period from the 23rd. day of June, 1895, to the present time, but they, and each of them, have neglected and refused to pay any taxes which were chanced to be assessed thereon at intervals, or to report said land for the major portion of that time, or to cause the same to be entered on the land books of the Commissioner of Revenue in Virginia, or on the land books in the counties of West Virginia, in which a portion of said grant was situate. They were fully cognizant, meanwhile with the persistent efforts of both States to make all real estate within their borders pay its just proportion of the revenue necessary to administer the government, but they, and each of them, stood silently by for many long years and neglected and refused to report for taxation the land claimed by them, or to pay any taxes thereon, except a pittance once in a great while.

These defendants further aver that those claiming under said John Peter Dumas, trustee, caused said land to be re-surveyed and located and their boundary identified as hereinbefore alleged, and no one or more of the several persons claiming under the said Robert Morris, or under the said Dumas, trustee, claimed any land to the west of said line as

page 155.]

located until about 1894, when the said Henry C. King appeared in the country, and, for the first time, set up the claim that said land was not properly located, and that all the lines, except the first one, should be run and located wholly by course and distance, to the utter disregard of all the natural and fixed monuments established by and called for by said James Taylor.

Those under whom said King now claims said land, and the right to locate it by course and distance, had knowledge all the while that the Commonwealth of Virginia, and afterwards the State of West Virginia, had been in good faith selling and granting to innocent purchasers, for valuable consideration, sundry portions of land to the west of said western line, as so located and now embraced in the lines as set forth in the decree of the 30th. of September, 1897, and claimed by the said Henry C. King to be the true and correct exterior lines of the said Morris grant, and that such grantees were entering into the actual possession of such portions so granted, and were not only paying taxes thereon in good faith each year, but were expending money and labor thereon in the improvement, clearing and settlement of the same, and they stood silently by without protest and suffered such sales and expenditures, and these defendants are advised that the said Henry C. King is now estopped and precluded by such conduct from claiming any land to the west of said line as so located from the Race fork and Knox creek to the mouth of Gilberts creek, especially any portions which has been disposed of by said States, and this defendant pleads and relies upon such conduct and the above facts and circumstances in bar of the alleged right of said King to run said line by course and distance alone, or the right to embrace any land of said survey lying to the west of said line as so located.

page 156.] These defendants aver that they, and those under whom they hold their lands, hereinafter mentioned and described, has taken and now claims the benefit of the forfeiture and escheat of any and all of their titles or colors of title, if any, to its said lands, or any of them.

These defendants aver that the William McCleary grant of

100,000 acres and the John Green grant of 84,000 acres, and the George Keith Taylor grant of 213,000 acres have been forfeited to the State of West Virginia for non-entry upon the land books, and for the non-payment of taxes thereon by the claimants thereof, and such title has inured to the benefit of these defendants, so far as any of its lands may be situate within any of said grants.

These defendants are seized and actually possessed of an estate in fee simple in and to the following described tracts of land, situate in Mingo county, on the Rock House Fork of Pigeon Creek, to-wit:

1: One tract of 1525 acres, situate as aforesaid, and composed of the following tracts of land:

One tract of 35 acres; one tract of 9 acres; one tract of 90 acres; one tract of 22 acres; and one tract of 50 acres, granted by the Commonwealth of Virginia to James White, Jr., Andrew Varney, Sr., Nathan Chafin, Samuel Varney, E. C. Duty and Andrew Varney; and one tract of 498 acres, regularly granted by the State of West Virginia, by L. D. Chambers, Commissioner of School Lands, to E. C. Duty, by deed bearing date the 22nd. day of May, 1888, and fully described in said deed.

2nd: One tract of 404 acres, situate as aforesaid, and composed of parts of the following surveys:

One of 23 acres; one of 55 acres; and one of 490 acres granted by the Commonwealth of Virginia to Andrew Varney, William Curry, James Brewster and Pleasant Chafin; and parts of four surveys of 20, 190, 45 and 179 acres granted by the Commonwealth of Virginia to Aly Smith.

page 157.] 3rd. One tract of 188½ acres, situate as aforesaid, and regularly granted by the State of West Virginia, to L. D. Chambers, Commissioner of School Lands, to C. W. Brockunior, by deed dated October 20, 1888.

4th. One tract of 29 acres, situate as aforesaid, and regularly granted by the State of West Virginia by L. D. Chambers, Commissioner of School Lands, to C. W. Brockunior, by deed dated October 20, 1888.

5th. One tract of 26 acres, situate as aforesaid, and regularly

granted by the State of West Virginia by L. D. Chambers, Commissioner of School Lands, to C. W. Brockunior, by deed dated October 20, 1888.

An abstract of title to said tracts of land is herewith filed as part hereof, and, in due time, these defendants will file duly certified copies of all grants, deeds and muniments of title to said tracts of land, as parts of this answer.

Said tracts or parcels of land and surveys of which they are composed, have been regularly assessed to the several owners for the time being, upon the land books of Logan county, and since 1895 upon the land books of Mingo county, ever since the emanation of the title to each tract either from the Commonwealth of Virginia or the State of West Virginia. The taxes so assessed have been regularly paid each year, and no portion of their said tracts is delinquent or forfeited for the non-payment of taxes charged thereon, or for-non-entry.

That on the 12th. day of February, 1889, the said C. W. Brockunior conveyed to his co-defendants, Joseph F. Paull and J. C. Alderson, one-half undivided of the said two tracts of 1525 and 404 acres, as will appear by the original of said deed herewith filed as part hereof; and by like deed dated the 2nd. day of November, 1889, he conveyed to his co-defendants one-half undivided in the other three tracts of land as will appear from the original of said deed herewith filed as part hereof.

6th. These defendants are also seized and possessed of an estate in fee simple in and to a tract of land, situate in Logan county on the Left fork of Cow creek, a tributary of
page 158.] Island creek, containing 139 acres, more or less, and described in that certain deed to them from George F. Browning and wife bearing date the 8th. day of April, 1889. An abstract of the title to which will be in due time filed herewith as part hereof, together with copies of all deeds and muniments of title.

7th. One tract of 37 acres on the head of Cow creek, Pine creek and Elk fork of Pigeon creek in Logan and Mingo counties, being

part of a tract of 154 acres regularly granted by the State of West Virginia by Ulysses Hinchman, Commissioner of School Lands, to John S. Dempsey, by deed bearing date April 5, 1871, and conveyed by Dempsey and wife to S. S. Altizer and by S. S. Altizer to defendants, J. C. Alderson and J. F. Paull. The former by deed dated January 13, 1890, and the latter by deed dated January 22, 1890. An abstract of which title is herewith filed as part hereof.

All taxes charged or chargeable upon the two tracts last above named have been paid for each year since the emanation of the title thereto either from the Commonwealth of Virginia or from the State of West Virginia to the present time by these defendants, or those under whom they hold.

These defendants further aver that they and those under whom they hold said lands have had and held the actual, open, notorious, adverse and exclusive possession of each of said tracts of land to the extent of the boundaries thereof continuously since the emanation of the title to each parcel either from the Commonwealth of Virginia or from this State, a period of more than ten years, and they are now seized of an estate in fee simple by title indefeasible.

These defendants aver that while their said lands are within what are known as the Sell lines of the Morris survey, which lines were set out particularly in the decree of the 30th. of September, 1897, in this cause, yet, as a matter of fact, said lands are not within the Morris grant when properly located, but lie to the west and wholly beyond said grant. They aver that their said lands

are within the William McCleary survey of 100,000
page 159.] acres.

Defendants deny that they are bound in any way by said decree of the 30th. of September, 1897, or by the said Sell survey and location.

They therefore pray that this, its answer, may be filed, and that the court will hear, try and determine all questions of forefeitures, escheat, title, possession, boundary and conflict of claims that may arise upon this answer, or otherwise in this cause; and that it may be adjudged that the lands of these defendants are not within said

Morris grant, or, if in it, that the forfeiture of said Morris grant has inured to the benefit of these defendants, and that they have taken the benefit of the escheat and forfeiture of any other title, or color of title to its said land, and that they, and those under whom they claim and hold, have had adversary possession for ten years, and have thereby barred and transferred all other claims and colors of title to their said lands, and for such other, further and general relief as the court may see fit to grant.

C. W. Brockunior
J. F. Paulle
J. C. Alderson
By Campbell, Holt & Campbell, Attys.

DEMURRER AND ANSWER OF KING TO ANSWER OF BROCKUNIOR ET ALS.

page 160.]

(Filed Feb. 12, 1903)

IN THE CIRCUIT COURT OF WEST VIRGINIA
FOR THE COUNTY OF CABELL.

State of West Virginia
vs.
Henry C. King, et als.

The demurrer and answer of Henry C. King to a bill of complaint filed against him here by C. W. Brockunior, J. F. Paull and J. C. Alderson, but improperly styled an answer to the original and five amended bills of the state.

To the Honorable E. S. Doolittle, Judge of said Court:

Now comes the defendant, Henry C. King, and for demurrer and answer to the said bill of complaint of the said C. W. Brockunior, J. F. Paull and J. C. Alderson, which is identical in terms as the bill of complaint of The Spruce Coal and Lumber Company, a corporation, against this defendant filed herein, refers to this defendant's demurrer and answer to said latter bill and adopts the same and all the averments, denials and allegations thereof as fully and to the same effect as if the same were here again repeated,

reiterated and set out in extenso, and asks that the same be taken and treated as his demurrer and answer to the said bill of complaint of the said C. W. Brockunior, J. F. Paull and J. C. Alderson.

And this defendant prays that the said bill of complaint of the said C. W. Brockunior, J. F. Paull and J. C. Alderson be dismissed and that this defendant be hence dismissed with his costs.

HENRY C. KING,
By Counsel.

MAYNARD F. STILES,
Solicitor.

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page 161.] ANSWER OF BLANKENSHIP, McGEE AND AND ALLISON.

(Filed July 5, 1901.)

IN THE CIRCUIT COURT OF CABELL COUNTY.

State of West Virginia
vs.) *In Chancery.*
Henry C. King and others.

The joint answer of K. H. Blankenship, William McGee and R. C. Allison, defendants, to the bill in the above cause, and to the five amended bills.

To the Honorable Edward S. Doolittle, Judge of said court:

The defendant, K. H. Blankenship avers that he is the owner in fee simple of a certain piece, parcel or tract of land situate in the counties of Mingo and Logan in the State of West Virginia, containing thirty acres, be the same more or less, conveyed to the said K. H. Blankenship by Harvey Bailey and wife by deed dated April 27th, 1888, and recorded in Logan county court clerk's office, in book "O", at page 66 therein, as

will more fully appear at large from said deed herewith filed as part hereof, marked "Exhibit K. H. B. No. 1".

That said parcel of land is made up of a patent for———— acres from the commonwealth of Virginia to said Harvey Bailey, a copy whereof is herewith filed as part hereof, marked "Exhibit K. H. B. No. 2."

That said Harry Bailey by his tenants held actual and adverse possession of said tract of land for many years and that the present owner, K. H. Blenkenship, has resided on said land continuously for over fifteen years and has cleared, cultivated and improved a considerable portion thereof.

That on the 1st. day of April, 1893, Jesse R. Irwin and others conveyed to said K. H. Blankenship another piece, parcel or tract of land, containing 400 acres, be the same more or less, by deed as of that date, afterwards recorded in Logan county court clerk's office on the 23rd. of December, 1893, whereby the

page 162.] said K. H. Blankenship became possessed in fee simple absolute, of said boundary of 400 acres of land, which tract of 400 acres is situate in Mingo county (formerly Logan county) and each of the parcels above mentioned and described are situate adjoining each other on Fourpole creek of Sandy river. The said Irwin deed in herewith filed as part hereof, marked "Exhibit K. H. B. No. 3."

That subsequently the said K. H. Blankenship, by deed or deeds herewith filed as part hereof, marked "Exhibit K. H. B. No. 4." conveyed all the mineral right in, on and under said land, including the coal, oil, gas and certain other rights in said deed mentioned, to the said William McGee and R. C. Allison, but retained the surface right to said 400 acres of land, whereby the said William McGee and R. C. Allison became possessed in fee simple absolute of and to said mineral rights on and under said 400 acres of land. That immediately after his purchase on the 1st day of April, 1893, the said K. H. Blankenship entered upon said 400 acres of land and he, with his grantees as aforesaid, has held continually and adverse possession thereof down to the present time.

That the defendant R. C. Allison is the owner of a tract of 187 acres of land situate on Ben creek of Sandy River, in Mingo county, conveyed to him by L. D. Chambers, commissioner of school lands, by a certain deed of May 4th, 1888, recorded in Book "J", page 546, in Logan county court clerk's office, which said deed is herewith filed as part hereof, marked "Exhibit R. C. Allison."

That the defendants William McGee and R. C. Allison (known as Crockett Allison), are the owners of a tract of 113 acres of land situate on Fourpole Creek, in Mingo county, conveyed to them by deed by Cloyd Bailey, a copy of which will, in due time, be filed herewith as part hereof, marked "Exhibit Allison No. 1."

The defendants also file herewith the deed from the said K. H. Blankenship to the defendants McGee and Allison above referred to, marked "Exhibit Allison No. 2".

page 163.] That said tract of 113 acres of land was conveyed by L. D. Chambers, etc., by a certain deed dated April 13th, 1886, to said Cloyd Bailey, which said deed was recorded in Logan county court clerk's office, October 4th 1886, which said deed is herewith filed as part hereof, marked "Exhibit Allison No. 4."

TAXES.

That all taxes and levies charged and chargeable upon each of said pieces, parcels or tracts of land have been regularly paid by the defendant and those under whom they claim, for each and every year and none of said pieces or parcels of land, or any of them, or either of them, is delinquent or forfeited for the non-payment of taxes or levies charged or chargeable thereon, or for the non-entry thereof on the land books.

POSSESSION.

That defendants and those under whom they claim to hold said land respectively from the date said deeds down to the present

clusive, adverse and uninterrupted possession of said parcels of land respectively from the date said deeds down to the present time, claiming the same and every part thereof and by virtue of the title papers aforesaid and to extent of the bounds and abuttals set forth and specified therein, or in the papers and records therein referred to.

BENEFIT OF FORFEITURE.

These defendants allege that the said title of the said H. C. King or those under whom he claims, has long since been forfeited in the manner and form and to the extent as is alleged in the answer of the defendants Wood, Harvey, Miller, Altizer and Nighbert, filed in this cause, and these defendants claim the benefit of such forfeiture and refer to the allegations of said answer of Wood and others above referred to, under the heading "Benefit of Forfeiture", and adopt the allegations under said heading as part and parcel of this answer, as much as if such allegation were herein repeated in extenso.

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These defendants also rely upon and adopt as part of this answer, the allegations of the said answer of Wood, Harvey and others, so far as the subject of escheat as in said answer of Wood and others is referred to, as much so as were the allegation of said answer of Wood and others under the heading of escheat herein set forth at large.

These defendants for further answer unto said bill do hereby adopt each, every and all of the allegations of the said answer of Wood and others found on pages 24, 25, 26, 27, 28, 29 and 30 of said answer, as much so and to such extent as if said allegations found on said pages from 24 to 30 (both inclusive), were herein repeated at large.

These defendants therefore pray, that this their answer may be filed and that this court will hear, try and determine all questions of forfeiture, escheat, title, possession, boundary and conflict of title, and that it may be adjudged that the lands of

these defendants are free from the claim of said Henry C. King, and that the forfeiture of the said Morris grant claimed by said King has inured to their benefit and that they have taken the benefit of the escheat or forfeiture of and other title or color of title if any, to their said lands, and that they and those under whom they hold, have had actual, exclusive, adverse, open and continuous possession of said lands for the period required by law, and have thereby barred and acquired all adverse titles, if any, and for such further and general relief as the court may see fit to grant.

K. H. BLANKENSHIP,
R. C. ALLISON.
By SHEPPARD & GOODYKOONTZ, *Attorneys.*
WILLIAM McGEE.
By CAMPBELL, HOLT & CAMPBELL, *Attorneys.*

page 165.] ANSWER OF KING TO ANSWER OF BLANKENSHIP, McGEE & ALLISON.

(Filed July 17, 1902)

IN THE CIRCUIT COURT OF WEST VIRGINIA

FOR THE COUNTY OF CABELL.

State of West Virginia
vs.) *In Chancery.*
Henry C. King, et als.

The answer of defendant Henry C. King to a bill of complaint filed against him in the above entitled cause by K. H. Blankenship, William McGee and R. C. Allison, but miscalled an answer to the Bill and five Amended Bills of the State herein.

To the Honorable Edward S. Doolittle,
Judge of said Court:

The defendant, Henry C. King, not waiving his demurrer to the said bill of the said Blankenship, and others, but insisting and relying upon the same, for answer to their said bill of

complaint, which they pretend to call and answer to the *bill* of the State aforesaid, or to so much thereof as he is advised that it is material for him to make answer unto, says:

1st: That this defendant denies that the said K. H. Blankenship, is the owner in fee simple or otherwise of a certain parcel of land situate in the counties of Mingo and Logan, containing thirty (30) acres, and referred to in his said bill, or that the said Harvey Bailey and his wife or either of them ever had any title or right to said land, and denies that the said Blankenship or the said Harvey Bailey by themselves or by their tenants have or ever had any active, adverse possession of said land or of any part thereof, for any period of time whatever, or cleared, cultivated or improved any portion thereof.

2nd: That this defendant admits that Jesse R. Irwin and others may have attempted to convey to the said Blankenship on the 1st. day of April, 1893, a tract or parcel of 400 acres, but denies that the said Blankenship ever became possessed of the same in fee simple, absolute or otherwise or by said deed, or otherwise ever acquired or now has any title, right or interest in or to said land, and avers that the said Jesse R. Irwin and his pretended co-grantors never had any title or color of title to said 400 acres or to any other land now in Mingo county, and never had any possession, right of possession or pretense of possession thereof.

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3rd: That if the said Blankenship executed to the said Allison and McGee any deed purporting to convey the mineral interest or any other interest in said 400 acres, that the said deed was wholly ineffectual to convey such interest or any interest therein, and that no right or title passed thereby to the said McGee and Allison or either of them, and that neither they nor any one for them nor any one under whom they claim had or has ever had any right, title or interest in or to or any possession whatever of the minerals or mineral rights attempted or pretended to be conveyed to them.

4th: That this defendant denies that the said R. C. Allison

is the owner of the tract of 187 acres on Ben Creek of Sandy River in said Mingo County mentioned in his said bill and avers that if the said L. D. Chambers, commissioner of school lands on the 4th. day of May, 1888, or at any other time, executed or attempted to execute to the said Allison any deed attempting to convey to the said Allison the land aforesaid, the same was without any authority of law whatever, and was wholly illegal, null and void and conveyed to the said Allison no title or right whatever nor any color of title to said land.

5th: This defendant denies that the said McGee and Allison are or that either of them is the owners of a tract of 113 acres on Fourpole creek in Mingo county, mentioned in their said bill, or that they have any title or interest therein or thereto, and denies that Cloyd Bailey under whom they claim to have acquired title to said land, ever had any title or right thereto or interest therein or any possession thereof; and avers

page 167.] that if L. D. Chambers on the 13th. day of April, 1886, or at any other time executed or attempted to execute and deed to said Bailey purporting to convey the said land, the same was without authority and is illegal, null and void and conveyed to the said Bailey no title or right whatever, nor any color of title to the said land.

6th: That whether all taxes and levies chargeable upon each or any of the tracts of land claimed by said plaintiffs or either of them have been regularly paid, this defendant is not informed and therefore denies that any taxes whatever have been charged or paid upon said lands by the said plaintiffs or those under whom they claim, and if such charging any payment be in any wise material, demands proof thereof.

7th: That this defendant denies that the said plaintiffs or either of them or any one for them or any one under whom they claim has ever had actual, visible, exclusive and uninterrupted possession of said parcels of land or either of them from the date of the deeds under which they claim to the time of the

filing of their bill, or for any other period of time to the extent of the bounds and abuttals set forth therein or otherwise.

8th: And for answer to that portion of the bill of the said Blankenship, Allison and McGee, which refers to and adopts the matters of forfeiture, title, etc, set out in the bills of Woods, Harvey, Miller, Altizer and Nighbert, this defendant refers to his answer to the bills of C. W. Campbell, Harvey, Miller, Altizer, Nighbert and others, and his answer to the bill of Stewart Wood, relative to said matters, and makes the same, and all of said answers except the portions thereof relating exclusively to the tracts of land claimed by the said Wood, Campbell, Harvey and others, part hereof to the same extent as if the same were here reiterated and set out at large.

9th. And for further answer this defendant says that the said plaintiffs Blankenship, Allison and McGee
page 168.] ought not to maintain their said bill because they have a plain, complete and adequate remedy at law in the actions of ejectment brought by this defendant against them in the circuit court of the United States for the district of West Virginia in 1895, and now pending in the United States circuit court for the southern district of West Virginia, for the recovery of the said Robert Morris 500,000 acre grant claimed by this defendant, of which the said parcels of land claimed by the said Blankenship, Allison and McGee are part and parcel.

10th: And this defendant further says that this court is without jurisdiction to entertain the bill of said plaintiffs or this proceeding.

WHEREFORE this defendant prays that the said bill of complaint of the said Blankenship, Allison and McGee be dismissed and that this defendant go hence with his costs.

HENRY C. KING,

By Counsel.

MAYNARD F. STILES,

Solicitor.

page-169.] PETITION OF FRAZEE, TRUSTEE.

(Filed Feb. 11, 1903)

State of West Virginia
vs.) *In Chancery.*
Henry C. King and others.

IN THE CIRCUIT COURT OF CABELL COUNTY, REMOVED FROM THE CIRCUIT COURT OF WYOMING COUNTY.

Th petition and answer of D. F. Frazee, Trustee, to the bill filed in the above styled cause.

To the Honorable E. S. Doolittle, Judge of said Circuit Court of Cabell County:

The petitioner herein would respectfully show and represent unto Your Honor, that on the 19th. day of February, 1796, the State of Virginia granted to one DeWitt Clinton a tract of land of 142,000 acres, lying in the present county of Logan, State of West Virginia, and that by sundry and mesne conveyances said land became and was in September, 1893, vested in Alexander McClintock and that in the equity cause of McClintock against Fontaine Brothers and others, in the circuit court of the United State for the District of West Virginia, said land was by order of said court placed in the hands of Z. T. Vinson, Special Receiver appointed therein; that under further order of said court said Receiver was directed to sell, and did sell said land, to one C. L. Talbott, and that the said C. L. Talbot sold and conveyed said land to this petitioner, D. F. Frazee, Trustee. Duly certified copies of all of said deed and orders will be filed with this petition if the court should so require. This petitioner further says that he is the sole owner of said land and that he has title superior and paramount to all

others thereto, and that he is entitled to redeem the same from forfeiture if the same is forfeited.

Your petitioner further avers that he is advised
page 170.] that the said lands owned by him and embraced in the Dewitt Clinton survey are subject to forfeiture and are subject to be proceeded against and sold in this proceeding for the benefit of the School Fund, by reason of the same having become forfeited for non-entry upon the Land Books of the proper counties, and your petitioner further avers that he is now ready and willing to pay all the cost, interest and back taxes necessary to effect a redemption of said lands, and that he is entitled to redeem the same by reason of his having title thereto superior and paramount to all other persons and claimants.

Your petitioner further says that he advised, believes and so charges that since the institution of this suit and within the last two or three years that one.....Bradshaw has cut and hauled a number of timber trees from said tract of land, and that the said trees so hauled are now on the bank of Huff's Creek, prepared and ready to be floated out to market and sold by said Bradshaw, unless the said Bradshaw is restrained from so doing.

Petitioner further advises that the said Bradshaw has no claim whatever to said trees, but the legal title thereto is in the State of West Virginia, the plaintiff in this suit, and the equitable title is in this petitioner, by reason of his right to redeem the land upon which the trees grew.

The petitioner further represents and avers that C. Crane & Company, a corporation, has likewise cut and hauled, or caused to be cut and hauled, timber trees from the said DeWitt Clinton tract of land without having any right or authority whatever so to do, and that a large number of trees are on the banks of Big Huff's Creek ready to be floated out to market and disposed of.

Petitioner further says that *on* Robert Claypool has now ready for market on the banks of Hun's Creek a large number of trees cut and taken from DeWitt Clinton tract of land, without having any right or authority for so doing, and that

page 171.] the same are now on the banks of Huff's Creek ready to be floated out to market and disposed of.

The Petitioner further alleges that all of said trees so cut are the property of the plaintiff, or State of West Virginia, in the first instance, with the equitable title thereto in this petitioner when the State's claim for taxes, interest and costs have been satisfied against said land.

Petitioner further charges that the said Bradshaw, C. Crane & Company and Robert Claypool have heretofore cut and removed, taken and sold, a great number of timber trees from said tract of land, the number and quantity are unknown to your petitioner, and when the said trees were so cut and removed they were likewise the property of the State of West Virginia, with an equitable title in this petitioner to the same.

Your petitioner would therefore pray.

(1). That this, his petition, may be filed and treated as his answer to the plaintiff's bill in this suit, and that he may be permitted to redeem said tract of land from forfeiture, or so much thereof as is capable of being redeemed, and pay the taxes, interest and costs necessary for that purpose, and have the same placed upon the Land Books of the proper county and charged therefor with legal taxes.

(2) He further prays that the said Bradshaw, C. Crane & Company and Robert Claypool be each enjoined and restrained from removing said timber out of the jurisdiction of this court and that each of them be further required to disclose, under oath, the number and quantity of trees and cubic feet that they have cut and removed from said tract of land, and that they and each of them be required to pay for said trees so cut and removed the actual cash value thereof, and that the same may be credited upon the amount required to redeem said land from

page 172.] forfeiture; and for such other general and specific relief as in equity he is entitled, and he will ever pray.

D. F. FRAZIE, *Trustee.*
By VINSON & THOMPSON, *Attys.*

State of West Virginia,
County of Cabell, to-wit:

I, T. J. Bryan, a Notary Public in and for the County and State aforesaid, do hereby certify that Z. T. Vinson this day personally appeared before me in my said county and being by me first duly sworn, upon his oath says, that he is the attorney for the petitioner D. F. Frazee, Trustee, and that said Frazee is a resident of the State of Kentucky and is not within the jurisdiction of the circuit court of Cabell county; that the said affiant has read the foregoing petition and knows the contents thereof, and that the allegations therein made are true, as he verily believes.

Z. T. VINSON.

Given under my hand this 3rd. day of Jany. 1903.

T. J. BRYAN,
Notary Public.

page 173.] ANSWER OF KING TO THE PETITION OF FRAZEE, TRUSTEE.
(Filed Mar. 16, 1903)

IN THE CIRCUIT COURT OF WEST VIRGINIA
FOR THE COUNTY OF CABELL.

State of West Virginia
vs.
Henry C. King, et als.

The Answer and Contest of Henry C. King, to the Petition of D. F. Frazee, trustee, filed herein.

To the Honorable Edward S. Doolittle, Judge of said Court:

This defendant, in answer to the said petition of said Frazee, trustee, or to so much thereof, as he is advised that it is material for him to answer, and in protest against the same says:

That this defendant admits that the Commonwealth of Virginia issued letters patent to one DeWitt Clinton on the 19th. day of February, 1796, purporting to grant to said Clinton 142,000 acres, of land lying within a described boundary purporting to contain 182,000 acres, of which 40,000 acres was reserved and excepted out of said grant on account of prior and superior claims thereto; but this defendant denies that Alexander McClintock in September, 1893, or at any other time, or Z. T. Vinson, as receiver or otherwise, or C. L. Talbot or the petitioner, Frazee, as trustee or otherwise, or any of them has or ever had any title, right or valid claim in law or equity, to any portion of said tract or to any land attempted to be granted by said letters patent to said Clinton, or has any right to redeem the same or any part thereof. Especially does this defendant deny that said petitioner or those under whom he pretends to claim, or any of them, has or ever had any title or valid claim to any portion of said pretended grant which overlaps the Robert Morris 500,000 acre grant, patented to Robert Morris June 23rd. 1795, which is owned by this defendant and which is elder and superior in title and rank to the said pretended DeWitt Clinton grant.

[page 174.]

That this defendant does not know what is the proper location of said DeWitt Clinton survey, but says that if the location given the same on the map filed by G. S. Stone in this cause be correct, which this defendant denies, then the exterior boundaries of the same overlap this defendant's Morris grant to the extent of 40,000 acres, which portion was reserved out of the operation of said letters patent and was not intended or attempted to be granted to said DeWitt Clinton, and no title to said interlock did pass to said Clinton thereby.

That this defendant denies that the said DeWitt Clinton

grant is "subject to forfeiture," but avers that the same was absolutely forfeited to the Commonwealth of Virginia long before the formation of the State of West Virginia and as early as the year 1838 or earlier, and the portion lying in Logan county has never been redeemed and has never been entered upon the land books of West Virginia and was never entered upon the land books of Virginia after the year 1835 and long before, and no taxes have ever been paid upon the same in either State as this defendant is informed, believes and charges, and the same was long ago extinguished as a grant, and is irredeemable under said Clinton grant under any existing law.

That this defendant denies that any land lying within any interlock between said Clinton tract and said Morris grant and embraced in this defendant's amended petition herein is subject to sale for the benefit of the school fund.

For further answer to said petition this defendant refers to his answer to the original and amended bills of the State of West Virginia herein and makes the same part hereof and adopts all the allegations thereof concerning the title to said Morris grant, the charging and payment of taxes thereon, and the denial of forfeiture of said land and makes said

page 175. | allegations part hereof as fully and to the same extent as if the same were here set forth at large.

And this defendant further says:

That this defendant admits that said Bradshaw, C. Crane & Company and Robert Claypole have cut large quantities of timber upon what the said petitioner alleges to be the DeWitt Clinton grant, but which is in fact this defendant's said Robert Morris grant, which timber was cut with out right or lawful authority and that said trespassers are threatening to remove, and unless restrained will remove, such of said timber as has not already been removed and disposed of; but this defendant denies that said timber belongs to the State or that said petitioner has any title or interest thereto or herein, legal, equitable or otherwise, or any right to have timber or the proceeds thereof applied to any of his uses or purposes.

This defendant and pretestant therefore prays:

That the said Frazee, trustee, be adjudged to have no right or title to any of the land described in this defendant's amended petition herein, or any right to redeem the same or any part thereof, and that said petition of said Frazee, trustee, be dismissed.

That a receiver be appointed to take possession of the timber mentioned in the petition of said Frazee, trustee, and herein before referred to and that he be directed to dispose of said timber under the orders of this court and bring the proceeds thereof into court, and that this defendant be decreed to be entitled to the same and to the proceeds of any other timber that may come into court, and that the same be paid over to this defendant or applied upon the payment of any taxes that may be found to be payable by this defendant, if any.

And this defendant will ever pray, etc.

HENRY C. KING,
By Counsel.

MAYNARD F. STILES,
Solicitor.

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page 176.] ORDER FILING ANSWER OF TURKEY CREEK LAND COMPANY.

State of West Virginia.

At a Circuit court held in and for the county of Cabell, at the court house thereof on the 7th day of July, 1901, the following order was entered:

State of West Virginia
v. (*In Chancery.*
Henry C. King et al.

This day the Turkey Creek Land Company, claimants under J. F. Paull, J. C. Alderson, E. H. Stewart and the heirs and de-

visees of W. W. Adams, tendered its answer, to the filing of which the defendant King objected, which objections
page 177.] were overruled and said answer filed, and the State replied thereto generally.

ANSWER OF TURKEY CREEK LAND COMPANY (*Filed July 7, 1901.*

IN THE CIRCUIT COURT OF CABELL COUNTY
JULY TERM, 1901.

State of West Virginia
vs. (*In Chancery.*
Henry C. King, et al.

The separate answer of Turkey Creek Land Company, a Corporation, to the Original and Five Amended Bills filed in the above Cause, or to so much and such parts thereof as it is advised it is material it should answer, answers and says as follows:

It may be true, as alleged in said bills, that on the 23rd. day of June 1795, the Commonwealth of Virginia issued to Robert Morris, assignee of Wilson Carey Nicholas, letters patent purporting to convey unto him a certain boundary of land therein described by metes and bounds, and described as contained 500,000 acres, and now situate in the States of Virginia, West Virginia and Kentucky but the greater portion thereof in the State of West Virginia; but, it denies that the boundary of land so granted and therein described, contains 500,000 acres, but, on the contrary, avers that there was and is not but 111,000 acres thereby granted and embraced within the lines and abuttals given in said patent; but this defendant, denies the issuance and delivery of such patent, and calls for strict proof thereof.

It may also be true, as alleged in said bills, that on the 16th day of November, 1795, the said Robert Morris executed a deed to James Swan purporting to convey said tract of land to him; but this defendant does not admit the execution and delivery of said

deed, or the conveyance of said boundary of land to said Swan, but denies the same, and calls for strict proof there-
page 178.] of. It may be true that the said James Swan de-
parted this life on the——day of May, 1831, as alleged in said bills, but this defendant denies the further allegation in said bills that said James Swan upon his death, left said boundary of land to the benefit of his creditors.

It also denies the further allegations in said bills that afterwards, to-wit, in the year 1838, by an act of the General Assembly of Virginai, said tract, among others, was released from forfeiture for taxes.

It also denies that the said tract was vested in John Peter Lamas, as trustee, for the benefit of Swan's creditors, by virtue of the act of the General Assembly, passed on the 15th. day of March, 1838, or in any manner vested in said trustee for any purpose whatsoever, and it denies that the said trust was kept up by successive appointments, and the said tract of land at any time vested in Robert E. Randall, as trustee. It admits the further allegation in said bills that for a portion of the time from the year 1838 until the year 1881 there was no taxes paid on said land; and it is true also that the title originally granted, if any at all, to the said Robert Morris, such title, after the date of said alleged patent, became forfeited to the State of Virginia, and also to the State of West Virginia.

It is true, as this defendant is informed and believes, that about the year 1881, an administrative proceeding was instituted by the Commissioner of School Lands of Wyoming county, in the Circuit Court of that county, the object of which was to sell said tract of land as forfeited to the State, for the benefit of the School Fund. It is also true that the said Robert E. Randall, trustee, filed his petition in said proceeding, alleging his ownership as such trustee, of 200,000 acres of said Morris grant; and that he held a mortgage lien upon the remaining 300,000 acres of said grant, and that as owner of part of said land, and as mortgage creditor of the owners of the residue of said land, he had a right to redeem the same from the alleged forfeiture. And said

proceeding was referred to a Commissioner to ascertain the taxes due and unpaid upon the said tract of land; and it
page 179.] was ascertained and reported that there was due upon the whole boundary of land unpaid taxes amounting to a large sum of money, to-wit, $150,000.00, but the said Robert E. Randall, trustee, and the Circuit Court of said county, and the Commissioner of School Lands of said county, recognizing the fact that the title so forfeited, had been transferred to and vested in certain junior claimants as to the divers and sundry portions thereof, under and by virtue of the Constitution and laws of the State, and leaving but a small portion of that part of said survey lying in West Virginia, the title whereto still remained in the State, it was estimated that the unpaid taxes on such portions so vested in the State amounted to $8,000.00; and thereupon the said Randall, trustee, paid into court the said last named sum, and he redeemed thereby only those portions, the title whereto then remained in the State, and he did not then and there or at any other time or place, pay taxes whatsoever upon any other portions of said land so situate in West Virginia. And this defendant avers that prior to that time, the predecessor of the said Robert E. Randall had caused the said Morris grant to be located upon the ground, and it was thereby ascertained that said grant contained only 111,000 acres, and not 500,000 acres, and the western boundary line was located as running from the southwest corner on the Race Fork of Knox Creek, in the State of Kentucky, in a northeast direction, crossing Knox creek at about four miles, and Tug Fork of Sandy at the mouth of Turkey creek at about twelve miles, and crossing the dividing ridge between said Tug fork, and crossing Gilberts creek twice to three sugar trees in a little bottom, standing on the bank of Guyandotte river, twenty poles below the mouth of Gilberts creek. And the said Robert E. Randall recognized that survey as the correct location of said Morris grant, and did not in said alleged redemption, pay any taxes whatsoever upon any land whatsoever lying to the
page 180.] west of said line as so located. And the said Robert E. Randall, trustee, abandoned to all adverse

claimants the several portion of said Morris grant, then held by them respectfully, and he refused to pay any taxes on such portions.

This defendant is informed, believes and charges that on the 30th. day of August, 1830, the said James Swan executed and delivered a deed, as alleged by the said Henry C. King in his petition and answer, purporting to convey to one Samuel Allison *inter alia* the said Morris grant and thereby divested himself of all the estate, right, title and interest both in law and in equity, in and to said boundary of land, and he never thereafter became entitled to any interest or estate in said land, or any title whatsoever. Therefore this defendant avers that the said tract of land did not pass to the said John Peter Dumas, trustee, under and by virtue of the act of the General Assembly of Virginia, passed on the 15th. day of March, 1838, which purported to vest, by general reference, but without specific mention or description, certain lands of which the said James Swan may have died seized, by title, legal and equitable.

This defendant further avers that on the 28th. day of September, 1846, the said John Peter Dumas, trustee, executed and delivered a deed purporting to convey to John Joseph Marie Schmidt Thornfeld 300,000 acres out of the alleged Morris grant of 500,000 acres, but reserved a vendor's lien thereon for the sum of, to-wit, $43,724, and the said Thornfeld on the ——— day of October, 1846, executed and delivered a deed purporting to convey said 300,000 acres to Auguste Marie Francois Novino de Sericourt and Louis Antoine de Maupertuis, managers and legal representatives of the Virginia Company Guyandotte, a corporation under the laws of France; and this defendant avers that the 300,000 acres so granted, are consumed by the land described in the aforementioned patent to Robert Morris.

This defendant further avers that on the 20th. day of April, 1850, Isaac Morgan, then escheator of Logan county, by an inquisition of escheat taken by him, as such escheator,
page 181.] commenced, conducted and concluded in the manner provided by law, before a regular jury of in-

quisition returned by the sheriff, and duly sworn and empanneled according to law, ascertained, found and determined by such inquisition that the 300,000 acres aforesaid, part of the Morris grant aforesaid, was escheated to the Commonwealth of Virginia, because the title thereto, legal and equitable, was in an alien or aliens and not in a citizen or citizens, or residents of the United States. A copy of such inquisition, duly certified, will be filed herewith as part hereof; and it also avers that at the same time and by the same escheator, the residue of said alleged grant, which said residue was described as containing 200,000 acres, was in like manner escheated to the Commonwealth of Virginia, because the owners thereof were aliens and not citizens and residents of the United States. A copy of said inquisition, duly certified, will in due time be filed herewith as part hereof.

This defendant further avers that the claim of title set up by the said Henry C. King in his petition to three-fourths undivided of the said Morris grant, under and by virtue of a certain quit-claim deed by the Pittsburg National Bank of Commerce to David W. Armstrong, and the deed from said Armstrong to said King, copies of which deeds are filed by said King with his petition, is null and void, because no title was ever vested in the said Bank, and because of the allegations and matters of law and fact alleged in that behalf in the answer of C. W. Campbell and others and T. H. Harvey and others, filed in this cause, to which answers this defendant here makes reference and adopts said allegations as part and parcel of this answer; and it avers that the allegations and facts therein contained in that behalf, are true.

This defendant further avers that at the time of the making and delivery of said deed by the said Swan to said Allison, the legal title to said grant had become vested either in the Commonwealth of Virginia or in the President and Directors of the Literary Fund by sale of said land in the manner provided by law for the taxes legally assessed thereon in the name of said James Swan, as averred by the said Henry C. King, at that time the said James Swan had

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merely a right of redemption of such portions of said grant as had not, under the laws of the State of Virginia, been transferred and vested, on such forfeiture, in junior claimants, and such right of redemption passed to and vested in Samuel Allison, under and by virtue of said deed of the 30th. day of August, 1830. Said sale and purchase by the State aforesaid, and the forfeiture thereby of the said grant, was never redeemed, or the land released or exonerated therefrom, and such delinquent taxes were never paid by the said James Swan, his heirs, devisees or assigns, and no taxes whatever after the year 1815 were assessed to or paid by said James Swan, his heirs, devisees or assigns; and the said land was never again entered upon the land books and assessed with taxes after said sale and forfeiture by and in the name of said Swan, his heirs, devisees or assigns; and the title to said land, so acquired at such sale thereafter remained either in the Commonwealth of Virginia or in the President and Directors of the Literary fund until the formation of the State of West Virginia, except to such portions thereof as were situate in the State of Kentucky, or to such portions thereof as were claimed by junior occupants, to whom the title so forfeited was transferred by law, or to such portions thereof, as were subsequently granted by said Commonwealth to *sundry* persons on the formation of the State of West Virginia, the title then remaining in either the said Commonwealth of President and Directors of the Literary fund to that portion of said grant embraced in said State of West Virginia, passed to and vested in said State, and it there remains, except to such portions thereof as have been since the 20th. day of June, 1863, granted, sold or conveyed by said State, either by letters patent or by deeds executed on her behalf by the several Commissioners of School Lands of the several counties where said land is situate.

This defendant therefore insists that said M[illegible]'s grant did not pass to the said John Peter Du[illegible]as, trustee, under said act of the 15th. of March, 1838, because said James Swan was not seized thereof at his death, by title, legal or equitable. But, if it be in error in this respect,

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and if said land did pass to said Dumas, trustee, under said act, then it avers that the said Dumas, trustee, on the 29th day of September, 1846, had parted with title to 300,00 acres as hereinbefore alleged, and the said 300,000 acres had been escheated as aforesaid to the Commonwealth of Virginia and was not subject to redemption, and said inquisition of escheat was never set aside, vacated or annulled, but remained and now still remains in full force and effect.

This defendant denies that said Henry C. King has any title, right or estate in and to the said 300,000 acres, or any right to redeem the same, because from the fact that the same had been escheated as hereinbefore stated, and because the deed from John R. Reed, trustee, did not in fact convey any title or right to said 300,000 acres, because he was not vested with such right or title as would permit him to sell or convey the same, and the deed from the Pittsburg National Bank of Commerce hereinbefore mentioned did not pass any title to the said 300,000 acres, because no right or title was vested in said Bank. This defendant avers that the title to the 300,000 acres aforesaid was vested in the Commonwealth of Virginia by the inquisition of escheat as aforesaid; but, if this defendant be in error in this respect, the title thereto did vest in said Commonwealth by purchase of said land at a sale thereof made for the non-payment of taxes legally assessed thereon in the name of the Virginia Company Guyandotte, as will appear by reference to the several certificates of the Auditor of Public Accounts of Virginia, which will in due time be filed as part of this answer. Said 300,000 acres was never redeemed from such sales, and no taxes have been paid on said 300,000 acres or any portion thereof, in West Virginia since 1863 by the Virginia Company Guyandotte, or by any one claiming under it or its trustees, except by those to whom said forfeited title has been transferred by patents, deeds, or by the Constitution and laws, and on such portions so transferred, taxes have been assessed to and paid regularly by such transferees, patentees or grantees claiming under them.

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This defendant avers that the title to the said 300,000 acres so vested in Thornfeld, and afterwards in said Sericourt and Maupertuis, trustees for the Virginia Company Guyandotte, did not pass to the said Anthony Lawson under the pretended deed from James M. Laidley, Special Commissioner, not only for the reasons hereinbefore set out, but also because said 300,000 acres was not decreed to be sold, nor was it in fact sold, nor was it decreed to be conveyed, nor was it in fact conveyed by such Special Commissioner. There was in lieu thereon of any character whatsoever in favor of the alleged plaiatiff, Claude Bernarde The said Thornfeld had long prior to said pretended deed parted with his alleged interest in said 300,000 acres, and the same was held by the said Sericourt and Maupertuis in trust for the Virginia Company Guyandotte, as aforesaid, and the said Company was not before said Logan Circuit Court in said pretended suit as a party, or otherwise, and the said Emile Dumas had no title or interest whatsoever in said 300,000 acres. The said Morris grant was not then held by *moities*, and only *moity* thereof is claimed to have been subject to the alleged debt of the said Bernarde, and the other *moity* to the cost of suit.

This defendant further avers that the lien for the purchase money thereof due from the said Thornfeld to said Dumas, trustee, reserved in a deed of the 27th. of September, 1846, has never been enforced by decree or otherwise in any suit, and said mortgage debt for the balance of purchase money, if not long since paid, has been barred by the statute of limitation for many years, and this defendant pleads and relies upon the bar of said statute so far as mortgage may effect any of its lands.

This defendant denies that the Circuit Court of the United States for the District of West Virginia had any power or jurisdiction in the suits alleged to have been removed thereto to-wit, the suits of ———— to direct a sale of said Morris grant, or of any power or interest therein, and the alleged sale thereof, made by the said John R. Reed, to said David W. Armstrong, so far as it depends upon any decree of said court, is void, and such sale is void because the

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Circuit Court of Kanawha county, if it had jurisdiction over said Morris grant in the suit last above named, which this defendant denies, had directed a public sale of said grant, and said Reed, trustee, had no power to make a private sale, and the decree directing a public sale has never been set aside or annulled.

This defendant avers that neither Wilson Carey Nicholas or Robert Morris, nor James Swan, not the heirs or devisees of either of them, nor the assigns, immediate or remote of either, nor any person claiming mediately or immediately under the said act of the General Assembly of Virginia, passed on the 15th. day of March, 1838, nor those claiming mediately or immediately under said deed from said Laidley, Special Commissioner, ever took actual or physical possession of said 500,000 acres, or any part thereof, at any time, or for any period from the 23rd. day of June, 1795, to the present time, but they, and each of them, have neglected and refused to pay any taxes which were chanced to be assessed thereon at intervals, or to report said land for the major portion of that time, or to cause the same to be entered on the land books of the Commissioner of Revenue in Virginia, or on the land books in the counties in West Virginia, in which a portion of said grant was situate. They were fully cognizant meanwhile with the persistent efforts of both States to make all real estate within their borders pay its just proportion of the revenue necessary to administer the government, but they, and each of them, stood silently by for many long years and neglected and refused to report for taxation the lands claimed by them, or to pay any taxes thereon, except a pittance once in a great while.

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This defendant further avers that those claiming under said John Peter Dumas, trustee, caused said land to be re-surveyed and located, and their boundary identified as hereinbefore alleged, and no one or more of the several persons claiming under the said Robert Morris, or under the said Dumas, trustee, claimed any land to the west of said line so located until about 1894, when the said Henry C. King appeared in the country, and, for the first time, set up the claim that said land was not

properly located, and that all the lines, except the first one, should be run and located wholly by course and distance to the utter disregard of all the natural and fixed monuments established by and called for by said James Taylor.

Those under whom said King now claims said land, and the right to locate it by course and distance, had knowledge all the while that the Commonwealth of Virginia, and afterwards the State of West Virginia, had been in good faith selling and granting to innocent purchasers, for valuable consideration sundry portions of land to the west of said western line, as so located and now embraced in the lines as set forth in the decree of the 30th of September, 1897, and claimed by the said Henry C. King to be the true and correct exterior lines of the said Morris grant, and that such grantees were entering into the actual possession of such portions so granted, and were not only paying taxes thereon in good faith each year, but were expending money and labor thereon in the improvement, clearing and settlement of the same, and they stood silently by without protest and suffered such sales and expenditures, and these defendants are advised that the said Henry C. King is now estopped and precluded by such conduct from claiming any land to the west of said lines as so located from the Race Fork and Knox Creek to the mouth of Gilbert's Creek, especially any portions which have been disposed of by said States, and this defendant pleads and relies upon such conduct and the above facts and circumstances in bar of the alleged right of said King to run said line by course and distance alone, or the right to embrace any land of said survey lying to the west of said line as so located.

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This defendant avers that it, and those under whom it holds its lands hereinafter mentioned and described, has taken and now claims the benefit of the forfeiture and escheat of any and all of their titles or colors of title, if any, to its said lands or any of them.

This defendant avers that the William McCleary grant of 100,000 acres, and the John Green grant of 84,000 acres and the George

Keith Taylor grant of 213,000 acres have been forfeited to the State of West Virginia for non-entry upon the land books, and for the non-payment of taxes thereon by the claimants thereof, and such title has inured to the benefit of this defendant so far as any of its lands may be situate within any of said grants.

This defendant avers that it is seized and possessed of an estate in fee simple in and to a certain boundary of land, situate on Turkey creek of Tug river in Mingo county, conveyed to it by J. F. Paull and others by deed duly recorded. A duly certified copy of which is herewith filed as part hereof, and reference is made to same for description of said land.

This boundary of land was granted by the Commonwealth of Virginia to John Dempsey, Jr., on or about March 1, 1860, and described as tract of 1191 acres, (see Book 2, page 479 Surveyor's Record of Logan County) John Dempsey, Jr., conveyed said tract of land to John Puckett by deed dated August 11, 1860; and John Puckett and wife conveyed the same to J. W. Deskins on the 11th day of January, 1866, and J. W. Deskins conveyed the same, less 350 acres, to Eli Trent by deed dated the 20th. of March, 1875; and Eli Trent conveyed a portion thereof, described as 350 acres, lying on the left side of Turkey creek, to F. Stukenberger and brother by deed dated July 6th, 1882; and the said Stukenbergers and wives conveyed said 350 acres, now described as 509 acres to J. F. Paull, trustee, by deed dated the 27th, day of May, 1890; and the said Eli Trent and wife conveyed to Stephen Bishop a portion of said grant described as containing 650 acres, situate on the Upper side of Turkey creek, by deed dated the 25th. day of February, 1842, and said Bishop and wife conveyed the same to Aswald Schall by deed dated March 11, 1889, and the latter and wife conveyed the same to J. C. Alderson, W. W. Adams, J. L. Caldwell and E. H. Stuart by deed dated the 11th day of March, 1889. J. W. Deskins conveyed a portion of said grant to G. A. Deskins, described as containing 200 acres, by deed dated December 13, 1870; and said G. A. Deskins and wife, otherwise known as

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Granville Deskins, conveyed the latter portion to George Cline by deed dated September 20, 1880, and Cline and wife conveyed the same to Eli Trent by deed dated September 8, 1881, and Trent and wife conveyed the same to A. J. Baker by deed dated July 6, 188?, and A. J. Baker and wife conveyed the same to S. H. Baker by deed dated May 1, 1890, and S. H. Baker and wife conveyed the same to J. F. Paull, trustee, by deed dated September 1, 189?. Copies of said patent and of said conveyances will in due time be filed herewith as part hereof.

This defendant and those under whom it holds, has had and continuously held ever since the date of said patent to the present time the actual, visible, adverse, exclusive and hostile possession of said land, claiming the same to the extent of the bounds set out in said deeds and patent, and have paid all taxes charged or chargeable for each and every year since the date of said patent; and said land is not delinquent or forfeited, and this defendant has a good and indefeasible title thereto.

Only a portion of said land is within the Morris grant of 500,000 acres when truly and correctly located; but the whole of said land is within what are known as the Sell lines of said Morris grant, which Sell lines were described in a decree of the 30th. of September, 189?.

The title to the Morris grant to the extent of the lap or interlock with the lands of this defendant has been transferred to and vested in this defendant, or in those under whom it holds, under the laws and Constitution of the Commonwealth of Virginia and the Constitution and laws of the State of West Virginia, as well as the benefit of the escheat of the said Morris grant by Isaac Morgan in 1850.

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It therefore prays that this, its answer, may be filed, and that the court will hear, try and determine all questions of forfeiture, escheat title, possession, boundary and conflict of claims that may arise upon this answer, or otherwise in this cause; and that it may be adjudged that the lands of this defendant are not within said Morris grant, or, if in it, that the forfeiture of said Morris grant has inured to its benefit, and that it has taken the benefit

of the escheat and forfeiture of any other title, or color of title to its said lands; and that it and those under whom it claims and holds have had adversary possession for ten years, and has thereby barred and transferred all other claims and colors of title to its said lands, and for such other, further and general relief as the court may see fit to grant.

TURKEY CREEK LAND CO.,
By Campbell, Holt & Campbell, Attys.

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page 190.] ANSWER OF KING TO THE ANSWER OF TURKEY CREEK LAND COMPANY.

(Filed Mar. 16, 1903.)

IN THE CIRCUIT COURT OF WEST VIRGINIA, COUNTY OF CABELL.

State of West Virginia,
vs.
Henry C. King, and others.

ANSWER of Henry C. King to bill of complaint filed against him in the above entitled cause by Turkey Creek Land Company, a corporation, which bill is by said corporation improperly styled an answer to the original and five amended bills of the State of West Virginia, herein.

To the Honorable E. S. Doolittle, Judge of said court:

Now comes the defendant Henry C. King and not waiving his demurrer to the said bill of complaint of the said Turkey Creek Land Company, but relying and insisting thereon, for answer to said bill of complaint or to so much thereof as he deems it material to answer, says:

I. That this defendant admits that in the proceedings in which Robert E. Randall, trustee, redeemed the said 500,000 acre grant in the circuit court of Wyoming county, the commissioner to

whom said cause was referred first reported the amount of taxes upon said land with interest thereon at 12 per cent per annum at about $150,000.00; but if the complainant had desired to state the real truth about the matter, it would have further stated in its said bill that said reference was made prior to the filing of Randall's petition, and that the taxes and interest were computed, not upon the area within the State of West Virginia, but upon the whole acreage of 500,000 acres; and not for the period for which taxes were properly chargeable, but for every year from 1839 to date, whereas the taxes were properly chargeable only from the year 1875, if properly chargeable at all; and this defendant avers, and the complainant and its counsel should know, that it was in recognition of that fact and not in acknowledgement of the transfer of the title to any part of said land to

page 191.] junior claimants, that the report of said commissioner was, upon exceptions by said Randall, and upon proof of payment of taxes up to 1875, overruled as to the amount of taxes, and the amount due ascertained by the court to be only $8,000.00. And this defendant denies that any part of said tract of land had by the constitution or otherwise been transferred to or vested in any junior claimant, or that Randall, trustee, acknowledged that it had been; and denies that he redeemed but a small part of said grant, and avers that he paid all the taxes that were chargeable upon all of said grant that lies in said State, being more than 300,000 acres, and more taxes than were justly payable thereon, and redeemed all of said land.

II. That this defendant denies that the predecessors of said Robert E. Randall, trustee, or any other person ever caused said Morris grant to be located on the ground whereby the same was ascertained to contain but 111,000 acres, or located the western boundary of the same as running from a southwest corner or any other point on Race fork of Knox creek in a north-east or any other direction to three sugar trees or to any other point or object twenty poles below the mouth of Gilbert creek, or elsewhere in the neighborhood of what is now known as Gilbert creek; and de-

nies that the said Robert E. Randall or any other person under whom this defendant claims ever acknowledged any such location of said grant as correct; and avers that the said Randall and his successors and predecessors in interest by entering said land upon the land books for the full amount of 500,000 acres, and paying taxes on that quantity, and by bringing actions against occupants of said land far to the west of Gilbert creek, repudiated and disavowed any such location as being correct. And denies that said Randall in his redemption of said grant abandoned or could abandon any land west of Gilbert Creek or elsewhere to the adverse claimants or otherwise, and avers that he paid the taxes on and redeemed all said tract, being more than 300,000 acres, lying in West Virginia.

page 192.] III. That this defendant is informed and avers that if James Swan in 1830, executed any deed to Samuel Allison the title to the portion of said 500,000 acre grant that then lay in Virginia, had previously been forfeited to and was then vested in the Commonwealth and did not pass by such deed to said Allison, and said Commonwealth was not thereby divested of title; and he further avers that such deed, if made, was not intended as an absolute conveyance but was in fact a trust accompanied by a defeasance, and that said Allison was a creditor and not a purchaser for value, the said Swan retaining the real ownership of said land, subject to the forfeiture to the Commonwealth, and such real interest as said Allison had became vested in and represented by said Dumas, trustee, for such creditors as this defendant is advised; and if not, then the same has passed to this defendant through the chain of title set out in his answer to the bill of the State herein. And this defendant is further advised and avers that all question of title between the State and all persons claiming under said Allison, including this defendant, has been finally adjudicated and settled herein in favor of this defendant. This defendant denies that the title to said land or interest remained vested in the Commonwealth after the act of March 15th. 1838, and avers that the same passed thereby to said Dumas,

trustee, and denies that the same ever became vested in the State of West Virginia, or ever passed to any of the grantees of said State.

IV. That this defendant admits that on the 29th. day of September, 1846, Dumas, trustee, conveyed to John Joseph Marie Schmidt Thornfeld 300,000 acres to be selected out of said 500,000 acres, subject to a vendor's lien thereon, which land was afterwards conveyed by said Thornfeld to Serecourt and Maupertuis, and later, as decreed by the circuit court of Kanawha county, became vested in Maupertuis alone, subject to said vendor's lien; but this defendant denies that said 300,000 acres consumed or consumes said entire tract.

page 193.] V. That this defendant has no knowledge whether or not any proceedings were ever instituted by or before one Isaac Morgan as escheator, for the escheat of said Morris grant, or any part thereof, for alienage, as set out in the said bill or otherwise, but he says that if any such proceeding was ever had, the same was unauthorized and illegal and neither passed any title to the Commonwealth of Virginia or to any person nor deprived the owners of said grant of title thereto; and further says that said grant was not subject to escheat for alienage or for any other cause, nor was such proceeding, if any was had, directed against the true owners of said grant. But if any title passed by any such proceedings, not only is the State estopped by subsequent receipt of taxes thereon from asserting title thereto, but the same was afterwards released to Robert E. Randall, Trustee, by the State of West Virginia, and never vested in said complainant or in any person under whom it claims.

VI. That this defendant for answer to so much of said bill as relates to the undivided three-fourths of said Morris grant at one time held by the Pittsburg National Bank of Commerce, refers to and adopts as part hereof that portion of his answer to the bill of C. W. Campbell et als. relating to that subject, particularly paragraph XV thereof.

VII. This defendant denies that any pretended proceedings in escheat had any legal effect upon the title to said 300,000 acres,

denies that the deed from Reed, trustee, under which this defendant claims did not pass title to said 300,000 acres, and avers that said deed and sale were made by authority of an order of court in a cause in which Serecourt and Maupertuis, the grantees of said Thornfeld, were parties, and in which the said Maupertuis was adjudged, as aforesaid, to be the owner of said land, subject to the trustee's vendor's lien, which order of sale was made by and with the consent of said Maupertuis.

VIII. That this defendant denies that the title to said 300,000 acres or to any part of said Morris grant ever passed to the Commonwealth of Virginia by virtue of any sale thereof for non-payment of taxes assessed in the name of the Virginia Company Guyandotte, because said Virginia Company Guyandotte never had any legal existence, and never any title to said land, and for other reasons appearing from the record of the pretended assessment and sale; but were this otherwise and any title had passed or did pass thereby, then the same was revested in Randall, trustee, by the redemption aforesaid in 1883, by which redemption the State and consequently all others were and are estopped from asserting title in or under the State.

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IX. That the circuit court of Logan county is and at the time of the institution of the suit of Claude Bernard against Theodore Dallard et als. was a court of general jurisdiction, and it appears that at least Maupertuis and Serecourt who, the complainant says, were the owners of the legal title to said 300,000 acres, were before the court, and it is not competent for the complainant herein, who is a stranger to the cause, the land and the parties, to question the regularity of the proceedings by which the court ordered the land to be sold; but this defendant is advised that in as much as the Virginia Company Guyandotte, had no interest in said land it was neither a necessary or proper party to said suit.

X. That this defendant avers that the lien for the purchase money reserved to the Swan trustee by the deed to Thornfeld in 1846 was foreclosed by the sale to Armstrong and the deed to LeMoyne; but were it not so, this defendant is not aware of any

principle of law whereby the complainant herein can interpose the bar of the statute of limitations between and in behalf of strangers, who do not themselves choose to rely upon it.

XI. That defendant is advised that it is immaterial whether the circuit court of the United States for the district of West Virginia or the circuit court of Kanawha county had jurisdiction of the suits affecting said Swan Estate, one of them
page 195.] at least had jurisdiction, and the same action was taken in each court, and the order at one time entered requiring a public sale of said land to be made was subsequently set aside. But this defendant is advised and avers that no order of sale was necessary to authorize said trustee to sell and convey said land; and he further avers that all question of this defendant's title has been finally adjudicated and settled herein in favor of this defendant.

XII. That this defendant denies that no person claiming under said Robert Morris ever took actual or physical possession of said 500,000 acre grant or any part thereof at any time from 1795 to the present time, and avers that he himself, soon after his purchase of said land, took and has retained actual possession of all said land, except so much as was in the actual adverse possession of other persons, which was not the case with any of the land claimed by the complainant; and denies that this defendant or those under whom he claims has or have ever refused to enter said land upon the land books or to pay the taxes thereon, but on the contrary the predecessors in title of this defendant had said land entered upon the land books for all but a few years up to 1883, and paid all taxes thereon not remitted by law, as will hereinafter more fully appear; and no effort was ever made to collect any taxes upon said land that was not successful, whereas the persistent efforts of this defendant to pay taxes on said land have for the past ten years been frustrated by the representatives of the State and interference of the agents and attorneys of the complainant herein and others.

XIII. That this defendant denies, as he hereinbefore hath done,

that John Peter Dumas ever located the boundary of said grant as contended by the complainant, and denies that this defendant is the first one to claim any land west of Gilbert creek, and avers that every predecessor of this defendant claimed said grant as extending beyond Gilbert creek, and never one of
page 196.] them claimed it as being limited or in any way bounded by the creek now known as Gilbert creek.

XIV. This defendant denies that those under whom he claims had any knowledge that either the State of Virginia or of West Virginia was granting or attempting to grant or convey to any innocent or other purchaser any land west of said Gilbert's creek, and within the boundary claimed by this defendant and set out in the decree of September 30th. 1897, and denies that any such persons were innocent purchasers. And defendant avers that both said States did in fact issue many pretended grants within said boundary, but neither the State nor the grantees in such pretended grants took any account whatever of any boundaries, and laid such grants indiscriminately over said entire 500,000 acre grant both east and west of what the complainant is pleased to term the "western boundary," at Gilbert creek, and the tract of land claimed by the complainant in its said bill is situated on Turkey creek and wholly east of what complainant calls the western boundary of said Morris grant.

XV. That it may be true that some of the persons claiming grants for portions of this defendant's land junior to the said grant to Robert Morris did take possession of such grants, but this defendant is advised that whether they did or not does not concern the complainant herein nor confer upon it any right whatever or cause of complaint against this defendant, none of the persons under whom the said complainant claims ever having taken or held any possession of the land claimed by it in its said bill except for a short time and for the purpose of stripping the same of great quantities of valuable timber, until very recently and after this suit was brought and had been pending for years with the *fully* knowledge of the said complainant and those under whom it claims,

and this defendant denies that said complainant or those under whom it claims ever expended any money whatever in the improvement of said land until after the filing of the 5th. amended bill by the State of West Virginia herein which the said complainant makes pretense of answering.

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XVI. That this defendant admits that the John Green 84,000 acre grant and the George Keith Taylor 213,000 acre grant have been forfeited to the State of Virginia, but denies that the complainant has derived any title or benefit whatever therefrom.

XVII. This defendant upon information and belief denies that the said complainant is seized or possessed of the land claimed by it in its said bill, and denies that the said complainant or any one under whom it claims title has ever had the actual, continuous, exclusive or other possession of said tract of land to the extent of the bounds thereof from the time of the emanation of the pretended title thereto to the time of the filing of said bill, or ever had any possession whatever of any of said land except small portions of the same and for short periods of time less than ten years and less than five years; and denies that said complainant has any valid title or claim whatever to said tract of land or any part thereof either by its said pretended grants and conveyances thereof or by the statute of limitations or by escheat or forfeiture or otherwise.

XVIII. That this defendant denies that the said tracts of land claimed by said complainant mentioned in its said bill is outside of the boundary of said Morris grant when properly located, and avers that the same is entirely within the boundaries of said grant whether properly located, as by the said decree of September 30, 1897, or improperly located as according to the contention of said complainant.

XIX. And this defendant for further and fuller answer unto said bill (miscalled an answer), and further showing why the relief therein prayed for should not be had doth say:

That this defendant is the legal and equitable owner of all the

land described in his amended petition, including all the land embraced in the several tracts mentioned in the said bill,
page 198.] and derives title thereto in the manner set out and shown in this defendant's answer to the bill and amended bills of the State filed herein, to which answer reference is hereby made and all the allegations of which concerning the derivation of title are hereby adopted and made part hereof.

XX. That said Morris grant contains within the boundaries thereof as surveyed by W. D. Sell and established by said decree of September 30, 1897, only about 415,000 acres of land, but the said grant was entered upon the land books of Virginia for the proper counties at 500,000 acres from 1796 to 1811 inclusive and the taxes thereon for those years paid by said James Swan. For those years the taxes were high, but for the subsequent time up to 1838, when the title to said land was vested in Dumas, trustee, by the act aforesaid, during which time the title became vested in said Literary Fund, the taxes were trifling, and the amount remitted by said act was little more than two hundred dollars. After the passage of said act the said 500,000 acres were charged upon the land books of Russell county up to and including the year 1843, and in 1847 was entered upon the land books of Logan county in parcels of 200,000 acres and 300,000 acres, and charged with the back taxes for 1844, 1845 and 1846, all which taxes were paid. Said land continued upon the land books of said county up to 1859 when said 300,000 was transmitted and entered upon the land books of McDowell county and was there charged with taxes upon the land books up to and including the year 1869; but how long the remaining 200,000 acres continued upon the land books of said Logan county this defendant is unable to state because of loss of such books for several years after 1859, but the taxes on said land were paid by redemption in 1855, and this defendant believes and avers that all the taxes thereafter up to and subsequent

to the formation of the State of West Virginia were paid. See certificates of the auditor No. 1 to No. 7, filed herewith.

XXI. That after the formation of said State of West Virginia, and in 1869, the said Robert E. Randall, trustee, caused said 200,000 acres of said Morris grant to be entered upon the land books of Wyoming county, and the heirs of said Maupertuis at the same time caused said 300,000 acres thereof to be entered upon the same books in their name. See auditor's certificate No. 8 filed herewith. In 1873 said Anthony Lawson caused the interest he claimed to be entered upon the land books of Logan county and charged with taxes back to 1865 at 375,000 acres, upon which amount he paid taxes for thirteen years before the same was reduced to 100,000 acres. See auditor's certificate No. 9 filed herewith. There was about 300,000 acres of said Morris grant situate in said State, and this defendant's grantors were contributing to the public revenues taxes on 875,000 acres of it, 575,000 acres more than lay in the State.

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XXII. That in 1873 said 300,000 acres was sold to the State for the delinquent taxes previously assessed thereon, and on the 6th. day of April, 1874, and within one year after such sale the same was redeemed by Randall, trustee, by paying to the auditor the sum of $8,434.15, see certificate of redemption No. 10 filed herewith, and the same having been again sold to the State for the taxes thereafter assessed, and said 200,000 acres having been also sold, the commissioner of school lands instituted the proceedings heretofore mentioned in the circuit court of said Wyoming county, in which proceeding said Randall, trustee, as the owner of 200,000 acres of said tract and mortgage of 300,000 acres thereof, was, upon his petition, permitted to redeem the same, which he did on the 10th. day of April, 1883, by the payment of $8,000.00 into court, that being adjudged to be the amount of taxes, interest and costs due thereon under the said claim of Randall and Maupertuis, and the said court that day entered its decree declaring that the same was by him redeemed, and all title of the said State

thereto released and said land exonerated from back taxes. A copy of said decree marked "Redemption 1883" is filed herewith and made part hereof. The said Lawson and his successors in interest, claimants of part of said Morris grant, and under whom this defendant claims, having at the time paid to the State more taxes than the State was entitled to demand upon said grant, the said Randall, by said two payments alone, made a gratuity of $16,434.15 to said State towards keeping peace and order among the complainant's grantors.

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XXIII. That said decree directed the clerk of said circuit court to certify a copy of said decree to the auditor of said State and also to the assessor of the proper assessment districts, in order that the said land be again charged with taxes, and the said clerk did certify said decree to said auditor on or about the 16th day of June, 1883, but whether he certified the same to the assessor or not this defendant is not informed, but he is advised that it is immaterial whether he did or not, as the assessors were not at that time charged with the duty of entering land on the land books and had no authority to do so. This defendant is advised that it was also the statutory duty of the clerk of said court to certify to the clerks of the county courts of said Wyoming, Logan and McDowell counties copies or abstracts of said decree, and of the auditor, to whom said decree was certified by the clerk of said circuit court as aforesaid, also to notify the said clerks of said county courts of the said decree, in order that the said clerks, who were the legal custodians of the land books of their said counties, should re-enter said land upon the said land books and charge the same with taxes, as they were required by law to do, the performance of any or all which duties the said Randall, trustee, could neither compel, aid nor prevent; and if any said duties were not performed and said land not re-entered upon the land books and charged with taxes, such failure and omission was the fault and through the default and neglect of the said State of West Virginia and her officers and agents charged with the duties aforesaid and chosen to perform those duties in part by those under whom complainant claims and in whose

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choice or election this defendant and those under whom he claims had no voice or part, and who did all that was reasonably in their power to have said land re-entered and charged with taxes, and who were always willing to pay any taxes lawfully chargeable upon said land; wherefore, as this defendant is advised, no claim of forfeiture of said land can be maintained by or on behalf of said State or of said complainant.

XXIV. That this defendant is advised and charges that no report of the alleged omission of said land from books was made to the auditor of said State, with all or any of the facts in relation thereto, as is required by statute, nor was any such report filed in the office of the said Auditor, nor recorded in any book kept by him, nor has the auditor at any time certified the said land to the commissioner of school lands of either of said counties, nor has any commissioner of school lands of any county certified the same to the circuit court of such county in the manner provided by law, nor have any of the acts and things required by law of the various State or county officers, in order to constitute a forfeiture under the terms of the statute, been done or observed nor has any record of such omissions of said lands from the land books, or any judicial determination of or inquiry into the matter, ever been made, nor any forfeiture ever been adjudged, determined or declared by any tribunal or any proceedings for the purpose.

XXV. That the auditor of said State is required by statute, to keep in his office a record of all forfeited real estate that shall come to his knowledge, in which shall be shown the name of the former owner or supposed owner of such land, the quantity, or supposed quantity, or other descriptions thereof, for what years the owner was not charged with taxes and when the real estate became forfeited, and said statute makes it the duty of the clerks

page 202.] of the county courts of the various counties, and who are the custodians of the land books, to certify to the auditor the omission of land from the land books; and the defendant avers that such a record is, and ever since the year 1883 and long prior thereto,

has been kept by said auditor as so required of him by law, and that there is no entry or mention of or reference to the said land claimed by this defendant or any part thereof, upon said record nor in the office of the said auditor; nor is there any record of forfeiture or pretended forfeiture, of said land, or any part thereof, since 1883, in in any office or place, nor does the said land appear upon the auditor's record of delinquent lands, as will appear from auditor's certificate "H. C. K. 18", filed herein. And this defendant says that the object of such record is, among other things, to afford notice to the world of the land forfeited or claimed by said State as a forfeiture, and to warn purchasers and encumbrancers of the claims of said State, and defendant says that the said State, and all persons claiming under it, are bound and estopped by said record; and defendant further says that when he purchased said land he did so in good faith and for a valuable consideration equal to more than three hundred thousand dollars, and in total ignorance and without notice or suspicion that said land, or any part thereof, or any interest therein, was claimed or alleged or supposed or pretended to be forfeited, but believing that he acquired by his said purchase a perfect, complete and indefeasible, legal and equitable title thereto, and to all thereof, except such parts as might have been lost by adverse possession under the statute of limitations which do not embrace any of the land claimed by the complainant relying upon the fact that the said land for a long time had been a trust estate under the control of said courts, and had been but a short time before defendant's purchase sold by their orders to defendant's grantor, and relying also upon the failure of the public records to disclose any defect in the title of defendant's grantors to said land, and as soon as defendant discovered that *said* land was claimed to be forfeited he made every effort and offer and has been at all times willing and able to pay and settle with said State and her officers for any taxes, if any, that should be or ought to have been charged against said land and paid by him or his predecessors.

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XXVI. That in 1893, the said State of West Virginia brought

a suit in the circuit court for Logan county, entitled State of West Virginia vs. LeMoyne, et als. for the purpose of subjecting said 500,000 acre grant to sale as forfeited, (see page 100 of the printed record on appeal), John A. Sheppard, Esq. appearing for the State, and this defendant appeared by his counsel and avowed his desire and purpose to pay any taxes that might be chargeable upon said land, and be relieved from all claims of forfeiture; whereupon, in order, as this defendant believes and charges, to prevent the payment of such taxes the said State caused said suit to be dismissed (page 116 of printed record), but later upon the discovery by her said counsel that the above entitled suit had subsequently been brought in another court and under the control of other counsel, the said Sheppard caused the said suit in Logan county to be reinstated upon the docket (page 117 of printed record), and at the next ensuing term of said circuit court in Wyoming county came into said court and endeavored to procure a dismissal of said cause pending therein.

XXVII. That this defendant was ready at the first term of said court in Wyoming county after this suit was brought, to file his answer thereto and to offer to pay, and to pay, any taxes that might be justly due from him upon said land, but the said Sheppard, attorney for the State in Logan county as aforesaid and others acting with him failing to procure a dismissal of said suit raised an objection to the process of some proceeding as to the "unknown heirs" of certain of this defendant's grantors who had parted with title during their lifetime, and induced the State by her counsel, to go back to rules for amendment, against the protest of this defendant who had the right and was willing to pay the taxes on said land without further amendment or the presence of other parties. And by like objection to subsequent bills and proceedings and against like protestations of this defendant's willingness to pay said taxes, said cause was protracted through more than two years and the filing of four amended bills before the same was in condition for this defendant to answer.

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XXVIII. That said Sheppard was the duly authorized attorney

of the State of West Virginia and this defendant is advised that the said State and the complainant herein, which claims some benefit or advantage from this defendant's non-payment of taxes, are bound by the actions of said attorney and estopped from claiming any advantage whatever from the failure of this defendant to pay the taxes upon the land claimed by him, as he offered and was ready to do in 1893, and at all times thereafter.

XXIX. That the said complainant was not made a party to this suit by the fifth amended bill filed by the State of West Virginia herein, nor by any other pleading, process or proceeding, and said bill states no cause of complaint against said complainant corporation and asks no relief against it, and said complainant was not required to appear in said cause but did so voluntarily and upon its on motion, and this defendant is advised that said complainant is bound and concluded by the decree of September 30th, 1897, rendered in the above entitled cause to the extent that the same was affirmed by the Supreme Court of Appeals of West Virginia upon the appeal of said State from said decree and is estopped from questioning any matters adjudged therein.

XXX. That the said pretended patent from the State of West Virginia to John Dempsey for said 1191 *ace* tract and every other pretended grant under which the said complainant claims was and is null and void and gave to said complainant no title or right whatever, because at the time said pretended grant was issued the land therein described and attempted to be granted had already been granted by the Commonwealth of Virginia to the said

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Robert Morris and was then owned and held by valid and perfect title by the grantors of this defendant and neither the said State of West Virginia or any officer thereof had any lawful power or authority to issue any other grant for any portion of the land embraced within the said grant to Robert Morris and no title thereto passed to the complainant corporation under any of the pretended deeds under which it claims or otherwise.

XXXI. That this defendant is not informed whether or not the said complainant and those under whom it claims or any of them have paid all or any taxes charged or chargeable upon said land and therefore denies that any such taxes have been paid, and requires proof of such payment if the same be held to be material.

XXXII. This defendant further says that in 1895, this defendant on account of the claim of title of the grantors of said corporation, brought an action of ejectment against the said grantors' and those under whom the said complainant claims, in the circuit court of the United States for the district of West Virginia, and said cause is now pending and undetermined in the circuit court of the United States for the southern district of West Virginia, and this defendant therefore says that if the said complainant has any ground or supposed ground of complaint against this defendant, it has a plain, speedy and adequate remedy at law in the action of ejectment aforesaid.

XXXIII. This defendant in further denial of the allegations of said bill and in further defense against the same says:

That the title to said Morris grant under which this defendant claims is not forfeited or vested in the State of West Virginia, or in the said complainant, or in any other person but this defendant, except the portion thereof conveyed by this defendant; and this defendant is advised and doth claim and contend and will maintain that the provisions of the constitution of the State of West Virginia and of any statutes thereof which attempt by their own

page 206.] operation irredeemably to forfeit land for the non-assessment of taxes thereon for the period of five years or any other time, or which attempt or purport to transfer to any other person the title to such land, have no proper application to the land claimed by this defendant; but that if such provisions or any of them do apply, by their terms, to the land claimed by the defendant, so far said constitution and statutes of said State, and as well the statute under which this proceeding is instituted, are in contravention of the Constitution of the United States and are null and void; and

this defendant invokes the protection of, and relies upon, the said Constitution of the United States.

And this defendant further says that this court is without jurisdiction to entertain the said bill or this proceeding.

WHEREOF this defendant prays that the said bill of complaint of the said Turkey Creek Land Company be dismissed and that this defendant go hence with his costs.

HENRY C. KING,
By Counsel.

MAYNARD F. STILES,
Solicitor.

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page 207.] AMENDED AND SUPPLEMENTAL ANSWER OF TURKEY CREEK LAND CO.

IN THE CIRCUIT COURT OF MARION COUNTY, WEST VIRGINIA.

STATE OF WEST VIRGINIA
VS.
HENRY C. KING, ET AL.

TO THE HONORABLE JOHN W. MASON, JUDGE OF SAID COURT:

THE AMENDED AND SUPPLEMENTAL ANSWER OF TURKEY CREEK LAND COMPANY, A CORPORATION TO THE ORIGINAL AND SIX AMENDED BILLS, FILED IN THE ABOVE STYLED CAUSE.

This respondent would most respectfully represent that it has heretofore filed its original answer herein, which it now refers to and makes a part thereof.

That at the time of filing said original answer it set forth there-

in, as it then had knowledge thereof, its title to a certain tract of land situate on Turkey creek of Tug River in Mingo County, West Virginia; that since the filing of said original answer a survey of the lands therein referred to has been made which shows that in addition to the grant of 1191 acres to John Dempsey, Jr., there is embraced in said tract all or part of three certain grants by the Commonwealth of Virginia as follows: Isom Blankenship for 34 acres, dated September 20, 1830; Eli Bailey for 10 acres, dated August 1, 1836; Eli Bailey 38 acres, dated July 1, 1854. Certified copies of all of said grants are herewith filed marked "Exhibit, John Dempsey, Jr., Grant 1191 Acres;" "Exhibit, Isom Blakenship, Grant 34 acres;" "Exhibit, Eli Bailey, Grant 10 acres;" "Exhibit, Eli Bailey, Grant 38 acres."

This respondent avers that the three last named tracts of land passed by regular conveyances to John Dempsey, Jr., but by reason of the destruction of certain of the records of Logan
page 208.] County and the mutilation and uncertainty of others, this respondent had been unable to find such deeds of conveyances. If such deeds should be hereafter found, copies thereof will be filed as "Exhibit, Isom Blankenship and Eli Bailey," respectively. After the title to said tracts of land vested in John Dempsey, Jr., said Dempsey conveyed all four of said tracts of land, with certain other lands, to John Puckett, by deed, a certified copy of which is herewith filed, marked "Exhibit Deed John Dempsey, Jr." John Puckett conveyed said four tracts of land with others to John W. Deskins by deed, a certified copy of which is herewith filed, marked "Exhibit John Puckett."

By deed dated December 13, 1870, J. W. Deskins conveyed to G. A. Deskins a portion of the said tracts of land supposed to contain 200 acres; a certified copy of said deed is herewith filed, marked "Exhibit J. W. Deskins, No. 1."

By deed dated March 20, 1875, John W. Deskins conveyed to Eli Trent all four of said tracts of land, except the part heretofore conveyed to G. A. Deskins; a certified copy of this deed is herewith

filed, marked "Exhibit John W. Deskins, No. 2."

By deed dated September 20, 1880, Greenville Deskins conveyed to George Cline the said tract of land conveyed to G. A. Deskins aforesaid. A certified copy of this deed is herewith filed, marked "Exhibit G. A. Deskins."

By deed dated September 8, 1881, George Cline conveyed to Eli Trent the said tract of land, containing 200 acres, as containing 300 acres; a certified copy of this deed is herewith filed, marked "Exhibit George Cline."

By deed dated the 25th day of November, 1882, Eli Trent conveyed to Stephen Bishop all the said four tracts of land on the East side of Turkey Creek; a certified copy of this deed is herewith filed, marked "Exhibit Eli Trent, No. 1."

By deed dated July 6, 1882, Eli Trent conveyed to A. J. Baker that portion of said 1191 acre tract of land lying on
page 209.] the left hand of Turkey Creek; a certified copy of this deed is herewith filed, marked "Exhibit Eli Trent, No. 2."

By deed dated July 6, 1882, Eli Trent conveyed to F. Stukenburg and brother the remainder of the said four tracts of land; a certified copy of this deed is herewith filed marked "Exhibit Eli Trent, No. 3."

By deed dated April 15, 1884, Stephen Bishop and wife conveyed to Oswold Schaaf that portion of the said four tracts of land which lie on the East side of Turkey Creek; a certified copy of this deed is herewith filed, marked "Exhibit Stephen Bishop, No. 1."

By deed dated March 11, 1899, Stephen Bishop and wife made a deed confirmatory to Oswold Schaaf for the said parcel of land; a certified copy of this deed is herewith filed, marked "Exhibit Stephen Bishop No. 2."

By deed dated March 11, 1889, Oswold Schaaf and wife conveyed to J. C. Alderson, W. W. Adams, J. F. Paull and E. H. Stewart the said tract lying on the East side of Turkey Creek; a certified copy of this deed is herewith filed marked "Exhibit Oswold Schaaf."

By deed dated May 1, 1890, Andrew J. Baker and wife convey-

ed to Samuel H. Baker that portion of land conveyed to said A. J. Baker by Eli Trent by deed dated July 6, 1882; a certified copy of this deed is herewith filed marked "Exhibit Andrew J. Baker."

By deed dated April 22, 1889, S. S. Altizer, Clerk of the County Court of Logan County, West Virginia, conveyed to James O'Keefe, a certain tract of land charged to A. J. Baker as a tract of 300 acres and sold in the year 1888 for non-payment of taxes for the year 1886, being the same tract of land conveyed to A. J. Baker by Eli Trent by deed dated July 6, 1882; a certified copy of this deed is filed herewith, marked "Exhibit S. S. Altizer."

By deed dated November 1, 1889 James O'Keefe and wife conveyed to J. D. Sergeant the tract of land conveyed to the said James O'Keefe by deed from S. S. Altizer, Clerk, dated April 22, 1889;

page 210.] a certified copy of said deed is filed herewith marked "Exhibit James O'Keefe."

At June Rules 1890 Alexander McClintock and Samuel H. Baker filed their bill of complaint in the Circuit Court of Logan County against James O'Keefe, J. D. Sergeant and A. J. Baker, praying that the deed from S. S. Altizer to James O'Keefe dated April 22, 1889, and also the deed from James O'Keefe and wife to J. D. Sergeant dated November 1, 1889 be set aside and held for naught. Such proceedings were had in such cause that on the 21st day of July, 1892 a final decree was entered therein setting aside and holding for naught the said deeds from S. S. Altizer to James O'Keefe and James O'Keefe to J. D. Sergeant; a certified copy of the record in said cause is filed herewith marked "Exhibit Record S. H. Baker."

By deed dated September 1, 1892, S. H. Baker conveyed the said tract of land to J. F. Paull, Trustee; a certified copy of this deed is herewith filed, marked "Exhibit S. H. Baker."

By deed dated May 22, 1890, Frederick Stukenburg and Joseph Stukenburg conveyed to J. F. Paull, Trustee, the said parcel of land conveyed to F. Stukenburg & Company aforesaid; a certified copy of this deed is herewith filed, marked "Exhibit F. Stukenburg."

By deed dated September 22, 1900, Joseph C. Alderson and

others conveyed all of said tracts of land to Charles Culross; a certified copy of this deed is herewith filed, marked "Exhibit Joseph C. Alderson."

By deed dated November 19, 1900, Charles Culrodd and wife conveyed said tracts of land to Turkey Creek Land Company; a certified copy of said deed is herewith filed, marked "Exhibit Charles Culross."

A certificate of A. C. Scherr, Auditor of the State of West Virginia, dated the 26th day of February, 1904, showing the assessment of the said tracts of land and the payment of taxes thereon is filed herewith, marked "Exhibit A. C. Scherr, Auditor."

Respondent avers that it is the owner of numerous and sundry other tracts of land proceeded against in this cause acquired since the filing of its original answer and not referred to herein as to which it desires to later make answer and by agreement with counsel for the State filed herewith, it is understood and agreed that the filing of this amended and supplemental answer shall in no wise prejudice the right of this respondent to make such other and further answer as to lands now owned by it but not mentioned or referred to herein, as it may desire.

[page 211.]

AND having fully answered as to the lands herein mentioned, the said respondent prays to be hence dismissed as to said tracts, with its reasonable costs in this behalf expended and in duty bound will ever pray.

By way of due authentication hereof the said Turkey Creek Land Company has caused these presents to be signed in its corporate name by its president, and its corporate seal to be hereto attached, attested by its secretary.

TURKEY CREEK LAND COMPANY,

By

(Seal) A. MOORE,

President.

ATTEST:

EDGAR P. RUCKER,

Secretary.

ANSWER TO KING TO AMENDED ANSWER ANSWER OF TURKEY CREEK TURKEY CREEK LAND COMPANY,

(Flled before Commissioner June 10, 1905.)

IN THE CIRCUIT COURT OF WEST VIRGINIA FOR THE COUNTY OF MARION.

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State of West Virginia

vs. A *In Chancery*

Henry C. King et als.

THE ANSWER TO HENRY C. KING TO A DOCUMENT FILED IN THIS CAUSE BY THE TURKEY CREEK LAND COMPANY, A CORPORATION, AND CALLED BY IT, "THE AMENDED AND SUPPLEMENTAL ANSWER OF TURKEY CREEK LAND COMPANY, A CORPORATION, TO THE ORIGINAL AND SIX AMENDED BILLS FILED IN THE ABOVE STYLED CAUSE."

To the Honorable John W. Mason, Judge of said Circuit Court:

Now comes the defendant, Henry C. King and says that the above mentioned document is in fact amendatory of, and supplemental to, an original bill of said Turkey Creek Land Company, heretofore filed herein against this defendant, under the name of "The separate answer of the Turkey Creek Land Company, a corporation, to the original and five amended bills filed in the above cause;" and this defendant therefore demurs to the same for that the same does not state any grounds or any facts entitling said corporation to any relief herein. And not waiving said demurrer, this defendant for answer to said document, or to so much thereof as he is advised that it is material for him to answer, says:

That this defendant denies that the tracts of 34 acres 10 acres

and 38 acres claimed by said corporation or either of them, ever passed to John Dempsey, Jr., by any written conveyance, or that any record of any such conveyance was ever dis-

page 213.] troyed *of* ever existed.

That this defendant denies that John Dempsey, Jr., executed or delivered to John Pucket any deed conveying or purporting to convey to said Pucket, the lands now claimed by said corporation or any part thereof.

That this defendant denies that said John Pucket ever conveyed or attempted to convey to John W. Deskins any tract of 10 acres wheresoever situated, or that John W. Deskins ever had any deed or writing from any person conveying or attempting to convey any tract of 10 acres of land patented to Eli Bailey, August 1st, 1836, or to any other person at any time, and no mention is made of any such tract in "Exhibit John Pucket" filed with said corporation's so-called supplemental answer; nor did said John W. Deskins ever have any color of title, claim of title or possession of the said tract of 10 acres.

That this defendant says that after the execution of the pretended deed from John Pucket to John W. Deskins dated January 11th, 1866, purporting to convey to said Deskins tracts of 1191, 42, 34 and 38 acres respectively, on and in neighborhood of Turkey Creek and prior to the execution of any other deed by said Deskins for any portion of said land to any other person, said John W. Deskins, as this defendant is informed, and believes, and as appears from the evidence in this cause, and as this defendant alleges, made, executed and delivered to James H. Deskins, about the year 1868, a deed in writing purporting to convey to said James H. Deskins that portion of said 1191 acre tract which is situated on and embraces so much of the basin of the Right Hand fork of Turkey Creek as lies within the boundaries of said 1191 acres and that said James H. Deskins entered into possession of said land or a portion thereof, under said deed and has never yet made or executed any deed conveying or purporting to or attempting to con-

vey the land claimed by him to the said Turkey Creek Land Company, or to any person under whom it claims.

page 214.] That said James H. Deskins never caused the land mentioned in the deed aforesaid from John W. Deskins to him to be entered upon the land books of Logan or Mingo counties, and to be charged with State or other taxes thereon, and said land was not entered upon said land books, but was omitted therefrom in the name of the said James H. Deskins for five successive years after the year 1869 to-wit: from the date of the execution of said deed prior to the year 1870 down to the present time, and no State or other taxes were charged thereon in the name of the said James H. Deskins for the five successive years after the year 1869, nor for any time prior or subsequent thereto, whereby the title and claim of said James H. Deskins to said land became forfeited and extinguished, and no title nor valid claim of title to such part of said 1191 acre tract passed to or vested in Eli Trent under or by the pretended deed of March 20th, 1875 from John W. Deskins to Eli Trent.

That the tract of 10 acres claimed by said Turkey Creek Land Company and described as patented to Eli Bailey, August 1st, 1836, has been omitted from the land books of Logan and Mingo counties continuously from and since the year 1866 in the name of all persons claiming title to said 10 acre tract under caid pretended patent, and no State or other taxes have been charged thereon in the name of any person undr whom said Turkey Creek Land Company claims, since the year 1866, or been paid by any such Company and described as petented to Eli Bailey, August 1st, 1836, has been omitted from the land books of Logan and Mingo counties continuously from and since the year 1866 in the name of all persons claiming title to said 10 acre tract under said pretended patent, and no State or other taxes have been charged thereon in the name of any person under whom said Turkey Creek Land Company claims, since the year 1866, or been paid by any such person, and particularly were no

State or other taxes charged thereon in the name of John Dempsey, John Pucket or John W. Deskins for the five years immediately following the year 1869, whereby such title or claim of title was ever passed to, or was held by, any of the persons under whom the said Turkey Creek Land Company claims was forfeited and extinguished.

That it may be that the pretended deeds were made as set out in the said so-called answer, except as herein before denies, but this defendant avers that no title or valid claim to any of the land described in said deeds or any of them passed to the pretended grantees therein or is now vested in the said Turkey Creek Land Company, or that any land is described therein, and this defendant denies that said Land Company has any valid right, title or claim in or to any land embraced in said alleged or pretended patents or deeds.

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That this defendant further denies that said corporation is the owner of numerous and sundry tracts of land "acquired since the filing of its original answer and not referred to" in its so-called answer, or any tracts of land or any land whatever within the boundaries of the Robert Morris grant, as ascertained and established by the survey of W. D. Sell, C. E., and by the decree of the Circuit Court for Wyoming County, and the Supreme Court of Appeals herein.

That this defendant for further answer says that he, and not the Turkey Creek Land Company, is the owner of all the lands mentioned in said so-called amended answed of said Turkey Creek Land Company and he refers to his original answer to the bill of said Turkey Creek Land Company, miscalled its answer to the bills of the State of West Virginia, and adopts the same and all the allegations thereof and makes the same a part hereof as fully as if the same were herein reiterated and set out at large.

This defendant therefore prays that he be adjudged to be the owner of said lands and that the said Turkey Creek Land Company is not the owner thereof, or that it has any right,

title or interest therein or thereto, and that the bill of said Turkey Creek Land Company and the amendment thereto be dismissed.

HENRY C. KING,
By Counsel.

MAYNARD F. STILES,
W. S. MERIDITH,
Solicitors.

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page 216.] SECOND AMENDED AND SUPPLEMENTAL ANSWER OF TURKEY CREEK LAND CO.
(Filed July 27, 1905.)

IN THE CIRCUIT COURT OF MARION COUNTY, WEST VIRGINIA.

STATE OF WEST VIRGINIA,
VS.
HENRY C. KING ET AL.

TO THE HONORABLE JOHN W. MASON, JUDGE OF SAID COURT:

THE SECOND AMENDED AND SUPPLEMENTAL ANSWER OF THE TURKEY CREEK LAND COMPANY, A CORPORATION, TO THE ORIGINAL AND SIX AMENDED BILLS FILED IN THE ABOVE STYLED CAUSE.

This respondent would respectfully represent that it has heretofore filed its original answer herein, which it now refers to and makes a part hereof.

That at the time of filing said original answer it set forth therein, as it then had knowledge thereof, its title to a certain tract of land situate on Turkey Creek of Tug River in Mingo

County, West Virginia, that subsequent to the filing of said answer a survey of the lands therein referred to has been made, which shows that, in addition to the grant of 1191 acres to John Dempsey, Jr., there were three other certain grants by the Commonwealth of Virginia for small tracts of land lying at and about the mouth of Turkey Creek included

page 217.] in the John Dempsey, Jr., patent for 1191 acres.

Evidence in this case as to the Turkey Creek lands was being taken before John T. Graham, Commissioner of this court under an agreement of counsel that the Turkey Creek Land Company was to admit its muniments of title and evidence of possession as to land situate in the Turkey Creek *Creek* basin and reserve to itself the right to subsequently submit later, evidence as to any other tracts which it might claim. Pursuant to said agreement, and while evidence was being taken before Commissioner Graham the Turkey Creek Land Company filed with him its amended and supplemental answer setting up the fact that the Commonwealth of Virginia had granted to Isom Blankenship 34 acres by patent dated September 20, 1830; to Eli Bailey 10 acres by patent dated August 1, 1836, and to Eli Bailey 38 acres by patent dated July 1, 1854, which tracts are situate on Turkey Creek, and at the same time filed with the said Commissioner an agreement on behalf of the State of West Virginia, executed by M. P. Matheney, her attorney, and the Turkey Creek Land Company, by Rucker, Anderson & Hughes, its Attorneys, wherein it was agreed that the Turkey Creek Land Company should have the right and privilege to thereafter file an amended and supplemental answer as to any other tracts of land claimed by it, which said amended and supplemental answer and agreement are hereby made and asked to be read as a part hereof.

Your respondent would respectfully show that, since the filing of its said original answer, it has acquired by purchase certain other tracts of land situate within the boundaries of the Robert Morris 500,000 acre grant mentioned and described in complainant's bill, as located by the defendant, H. C. King.

Said tracts of land so acquired by this respondent are here designated and referred to as numbered from 1 to 36, inclusive. The interests owned by this respondent in said tracts of land are as follows:

TRACT NO. *L.*

This respondent avers that it is the owner in
page 218.] fee simple of a certain tract of land containing 124 acres situate on Gilbert's Creek in Mingo County, West Virginia, which said tract was conveyed to this respondent by Charles B. Taylor and wife, A. Moore and wife, and Guy White and wife, by deed dated April 5, 1902, and recorded in the office of the Clerk of the County Court of Mingo County, in Deed Book No. 10, page 67.

This respondent would further show that the said tract of land was sold by L. D. Chambers, Commissioner of School Lands, for Logan County, West Virginia, as a tract of 119½ acres, at which sale Moses Mounts became the purchaser, and by an order entered on the 4th day of April, 1888, by the Circuit Court of Logan County, a deed was directed to be made to the said Moses Mounts for the said tract of land. A deed was accordingly executed by said commissioner, L. D. Chambers, to the said Moses Mounts for the said tract of land, dated January 15, 1889, a certified copy of which is filed herewith, as a part hereof, marked "Turkey Creek Land Company Exhibit Tract No. 1, Deed No. 1."

Certified copies of the deeds and proceedings under which this respondent claims title to the said tract of land will be herewith filed, if necessary or desired, marked "Exhibit Title Papers Turkey Creek Land Company, Tract No. 1."

TRACT NO. 2.

This respondent avers that it is the owner in fee simple of a certain tract of land situate on Gilbert Creek in Mingo County, West Virginia, containing 34 acres, conveyed to this respondent by Charles B. Taylor and wife, A. Moore and wife and Guy

White and wife, by deed dated April 5, 1902, and recorded in the office of the clerk of the county court of Mingo County, in Deed Book No. 10, at page 67.

This respondent avers that the said tract of land
page 219.] is a portion of a tract of 90 acres granted by the Commonwealth of Virginia to Humphrey Trent by letters of patent bearing date July 3, 1860, and that the title passed by a regular chain of conveyances until it became vested in this respondent, as aforesaid. A certified copy of said patent is filed herewith, as a part hereof, marked "Turkey Creek Land Company, Exhibit Title Papers, Tract No. 2, Patent No. 1."

Certified copies of the deeds and proceedings under which this respondent claims title to said tract will be herewith filed, if necessary, or desired, marked "Exhibit Title Papers, Turkey Creek Lumber Company, Tract No. 2."

TRACT NO. 3.

This respondent avers that it is the owner in fee simple of a certain tract of land containing 136½ acres situate on Brushy Fork of Four Pole Creek, in Mingo County, West Virginia, conveyed to the respondent by Charles B. Taylor and wife, A. Moore and wife, and Guy White and wife, by deed dated April 5, 1902, and recorded in the office of the clerk of the county court of Mingo County in Deed Book No. 10, page 67.

This respondent would show that the said tract of land is a portion of a grant of 480,000 acres of land granted by the Commonwealth of Virginia to Robert Morris by patent dated the ..... day of ....., 1795; that by regular conveyances the title to the said tract of land passed until it became vested in this respondent, as aforesaid.

This respondent would further show that, by writing bearing date on the 13th day of August, 1904, V. A. Wilder, attorney in fact for the defendant, Henry C. King, and M. F. Stiles,

attorney said King waived and quit claimed any and all claim or right the defendant Henry C. King may have had
page 220.] in said tract. The original paper, or a certified copy thereof, will be filed herewith, when necessary. This respondent now relies on the said writing as an estoppel against said King from any and all claim whatever to the said tract of land.

Certified copies of the deeds and proceedings under which this respondent claims title to the said tract of land will be filed herewith, marked "Exhibit Turkey Creek Land Company Title Papers, Tract No. 3."

TRACT NO. 4.

This respondent avers that it is the owner on fee simple of a tract of land containing 63½ acres situate on Gilbert Creek in Mingo County, West Virginia, conveyed to it by Charles B. Taylor and others by deed dated the 5th day of April, 1902, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book No. 10, page 67.

This respondent would show that said tract is a portion of a 112 acre tract granted by the Commonwealth of Virginia to Jacob Cline by letters of patent bearing date on the 22nd day of July, 1867. A certified copy of said grant is filed herewith as a part hereof marked "Exhibit Turkey Creek Land Company, Tract No. 4, Patent No. 1."

Certified copies of the deeds and proceedings under which this respondent claims title to the said tract of land will be filed herewith, marked "Exhibit Turkey Creek Land Company, Title Papers, Tract No. 4."

TRACT NO. 5.

This respondent avers that it is the owner in fee simple of a certain tract of land situate on Fourpole Creek in Mingo County, West Virginia, containing 15 acres, conveyed to it
page 221.] by Charles B. Taylor and others by deed bearing date April 5, 1902, and recorded in the office of the

clerk of the county court of Mingo County, in Deed Book No. 10, page 67.

This respondent would show that the said tract of land is a portion of a certain tract of 58 acres granted by the Commonwealth of Virginia to Harvey Bailey by letters of patent bearing date the 30th. day of September, 1848; that the title to the said tract of land passed by regular conveyances until it vested in this respondent as aforesaid.

A certified copy of said patent is filed herewith, as a part hereof, marked "Exhibit Turkey Creek Land Company, Tract No. 5, Patent No. 1."

Certified copies of the deeds and proceedings under which this respondent claims title to the said tract of land will be filed herewith, marked "Exhibit Turkey Creek Land Company Title Papers, Tract No. 5."

TRACT NO. 6.

This respondent avers that it is the owner in fee simple of a certain tract of land situate on Four Pole Creek in Mingo County, West Virginia, containing 23 1/2 acres, conveyed to it by Charles B. Taylor and others by deed bearing date April 5, 1902, and recorded in the office of the clerk of the county court of Mingo County in Deed Book No. 10, page 67.

This respondent would show that the said tract of land is a portion of certain tract of 58 acres granted by the Commonwealth of Virginia to Harvey Bailey by letters of patent bearing date on the 30th day of September, 1848; that the title to the said tract of land passed by regular conveyances until it vested in this respondent as aforesaid.

A certified copy of said patent is filed herewith, as part hereof, marked "Exhibit Turkey Creek Land Company, No.

page 222.] 6, Patent No. 2."

Certified copies of the deeds and proceedings under which this respondent claims title to the said tract of land will be filed herewith, marked "Exhibit Turkey Creek Land Company Title Papers, Tract No. 6."

TRACT NO. 7.

This respondent avers that it is the owner in fee of a tract of land situate on the head of the Spring Fork of Ben Creek in Mingo County, West Virginia, containing 46 acres conveyed to this respondent by Charles B. Taylor and others, by deed dated April 5, 1902, and recorded in the office of the clerk of the county court of Mingo County in Deed Book No. 10, page 67.

This respondent would show that the said tract is a portion of a tract of 1300 acres granted by the Commonwealth of Virginia to Warren M. Alderson by patent dated the 1st day of November, 1859. A certified copy of said patent is filed herewith as a part hereof marked "Exhibit Turkey Creek Land Company, Tract No. 7 patent No. 1."

Said tract is also a portion of a survey of 395 acres of land situate on the Spring Fork of Ben Creek in Mingo County made for William Collins agreeable to an entry made in the surveyor's office of Logan County, Virginia, on the 8th day of March, 1856, which survey was granted by the Commonwealth of Virginia to William Collins by patent bearing date ——— day of ——— ———. A certified copy of said patent will be filed herewith as a part hereof marked, "Exhibit Turkey Creek Land Company, Tract No. 7, Patent No. 2."

Said tract is also a portion of a grant of 24 acres to William Collins, bearing date October 1, 1850, a copy of which is herewith filed "Exhibit Turkey Creek Land Company, Tract No. 7, Patent No. 3."

Certified copies of the deeds and proceedings under which this respondent claims title to the said tract of land will be filed herewith marked, Exhibit Turkey Creek Land Company Title Papers, Patent No. 2."

page 223.] TRACT NO. 8.

This respondent avers that it is the owner in fee simple of a certain tract of land situate on both sides of Gilbert Creek in Mingo County, West Virginia, containing 5 acres, more or less, conveyed to it by Charles B. Taylor, and others, by deed bearing date on

the 5th day of April, 1902, and recorded in the office of the clerk of the County Court of Mingo County, in Deed Book No. 10, page 67.

This respondent would show that the said tract of land is a portion of a tract of 225 acres granted by the Commonwealth of Virginia to Frederick Trent by patent bearing date November 1, 1859. A certified copy of said patent is filed herewith as a part hereof marked "Exhibit Turkey Creek Land Company, Tract, No. 8, Patent.

Certified copies of the deeds and proceedings under which this respondent claims title to the said tract of land will be filed herewith marked, "Exhibit Turkey Creek Land Company, Title Papers, Tract No. 8."

TRACT NO. 9.

This respondent avers that it is the owner in fee simple of a certain tract of land situate on the Spring Fork of Ben Creek, in Mingo County, West Virginia, containing 406 acres, conveyed to this respondent by Charles B. Taylor and others by deed bearing date April 5, 1902, and recorded in the office of the clerk of the county court of Mingo County in Deed Book No. 10, page 67.

Respondent would show that said tract includes a certain tract of 187 acres conveyed by L. D. Chambers, Commis-
page 224.] sioner of School Lands for Logan County, to Crockett Ellison, by deed bearing date May 4, 1888. A certified copy of said deed is filed herewith as a part hereof, marked "Exhibit Turkey Creek Land Company, Tract No. 9."

Certified copies of the deeds and proceedings under which this respondent claims title to the said tract of land will be filed herewith marked "Exhibit Turkey Creek Land Company Title Papers, Tract No. 9."

TRACT NO. 10.

This respondent avers that it is the owner in fee simple of a certain tract of land containing 350 acres situate on Fourpole

Creek, in Mingo County, West Virginia, conveyed to this respondent by Charles B. Taylor and others by deed bearing date on the 5th day of April, 1902, and recorded in the office of the clerk of the county court of Mingo County in Deed Book No. 10, page 67.

This respondent would show that the said tract of land was a portion of a grant of 480,000 acres to Robert Morris bearing date on the ..... day of ....., 1795; that the title to said tract of land regularly passed until the same became vested in this respondent as aforesaid. Certified copies of the deeds and proceedings under which this respondent claims title to the said tract of land will be filed herewith, marked "Exhibit Turkey Creek Land Company Title Papers, Tract No. 10."

TRACT NO. 11.

This respondent avers that it is the owner in fee simple of a certain tract of land situate on the waters of Fourpole Creek in Mingo County, West Virginia, containing 257 acres, and conveyed to it by Charles B. Taylor and others by deed
page 225.] bearing date on the 5th day of April, 1902, and recorded in the office of the clerk of the county court of Mingo County in Deed Book No. 10, page 57.

This respondent would show that this tract of land is a portion of a 480,000 acre grant from the Commonwealth of Virginia to Robert Morris dated the .... day of ....., 1795; that the title to said land regularly passed until it became vested in this respondent as aforesaid. Certified copies of the deeds and proceedings under which this respondent claims title to said land will be filed herewith marked, "Exhibit Turkey Creek Land Company Title papers No. 11."

TRACT NO. 12.

This respondent avers that it is the owner in fee simple of a certain tract of land, containing 110 acres, situate on Gilbert Creek in Mingo county, West Virginia, conveyed to it by Charles B.

Taylor and others, by deed bearing date on the 5th day of April, 1902, and recorded in the office of the clerk of the county court of Mingo County in Deed Book No. 10, page 67.

This respondent would show that said tract of land includes a certain tract of 19 acres granted by the Commonwealth of Virginia to Jacob Cline by patent bearing date the 5th day of February, 1861. A certified copy of said patent will be filed herewith marked "Exhibit Turkey Creek Land Company, Tract No. 12, Patent No. 1." Said tract is also a portion of a tract of land granted by the Commonwealth of Virginia to Frederick Trent by patent bearing date the 29th day of November, 1845. A certified copy of said patent is filed herewith, a part hereof, marked "Exhibit Turkey Creek Land Company, Track No. 12, Patent No. 2." Said tract is also a portion of a tract of 75 acres granted by the Commonwealth of Virginia to Jacob Cline August 21, 1858, a certified copy of which patent is filed herewith marked "Exhibit Turkey Creek Land Company, Tract No. 12, Patent No. 3."

A certified copy of the deeds and proceedings under
page 226.] which this respondent claims the said tract of land will be filed herewith marked "Exhibit Turkey Creek Land Company Title Papers, Tract No. 12."

TRACT NO. 13.

This respondent avers that it is the owner in fee simple of a certain tract of land containing 142 acres, situate on Fourpole Creek, in Mingo County, West Virginia, and conveyed by this respondent by Charles B. *Tayloe* and others by deed bearing date on the 5th day of April, 1902, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book No. 10, page 67.

This respondent avers that a portion of said tract is included in the tract of 100 acres granted by the Commonwealth of Virginia to Thomas Mullins and Harvey Bailey by patent dated the 31st day of October, 1848. A certified copy of said patent is filed herewith, as part hereof, marked "Exhibit Turkey Creek Land Company, Tract N. 13 Patent" Said tract also includes a certain

tract of land conveyed as 113 acres by L. D. Chambers, Commissioner of School Lands for Logan County, to Cloyd Bailey by deed bearing date on the 13th day of April, 1888. A certified copy of said deed is filed herewith, as part hereof, marked "Exhibit Turkey Creek Land Company, Tract No. 13, Commissioner's deed."

Certified copies of the deeds and proceedings under which this respondent claims title to the said tract of land will be filed herewith, marked "Exhibit Turkey Creek Land Company, Title Papers, Tract No. 13."

TRACT NO. 14.

This respondent avers that it is the owner in fee
page 227.] simple of a certain tract of land containing 168 acres situate on Old House Branch of Gilbert Creek in Mingo County, West Virginia, conveyed to this respondent by Charles B. Taylor and others by deed bearing date on the 5th day of April, 1902, and recorded in the office of the clerk of the county court of Mingo County in Deed Book No 10, page 67.

This respondent would show that said tract of land is the same tract conveyed as 148 acres by J. D. Ellison, Special Commissioner of the Circuit Court of Logan County, in pursuance of the authority vested in him by an order of said court made on the 26th day of November, 1892, and pursuant to the sale of school lands made by L. D. Chambers, Commissioner of School Lands for Logan County, on the 5th day of July, 1888, to Lee Joyce. A certified copy of said deed is filed herewith as a part hereof, marked "Exhibit Turkey Creek Land Company, Tract

Certified copies of the deeds and proceedings under which this respondent claims the title to the said tract of land will be filed herewith marked, "Exhibit Turkey Creek Land Company Tract No. 14."

TRACT NO. 15.

This respondent avers that it is the owner in fee simple of a certain tract of land containing 25 acres, more or less, situate on

Four Pole Creek in Mingo County, West Virginia, conveyed to this respondent by Charles B. Taylor and others by deed dated the 5th day of April, 1902, and recorded in the office of the clerk of the county court of Mingo County in Deed Book No. 10, page 67.

This respondent would show that it holds title derived directly from patent or patents granted by the State of Virginia and West Virginia, which title passed by a regular
page 228.] chain of conveyances until it vested in your respondent as aforesaid. Certified copies of said deeds and the proceedings under which this respondent claims title to the said tract will be filed herewith, marked "Exhibit Turkey Creek Land Company Title Papers, Tract No. 15."

TRACT NO 16.

This respondent avers that it is the owner of the mineral in, on and under a certain tract of land situate on Gilbert Creek in Mingo County, West Virginia, containing 72½ acres, which mineral rights were conveyed to this respondent by Charles B. Taylor and others by deed dated the 5th day of April 1902, and recorded in the office of the clerk of the county court of Mingo County in Deed Book No. 10, page 67.

This respondent avers that the said tract of land includes a portion of a tract of 48 acres granted by the Commonwealth of Virginia to Frederick Trent by patent bearing date the 29th day of November, 1845. A certified copy of said patent is filed herewith as a part hereof, marked "Exhibit Turkey Creek Land Company, Tract No. 15, Patent No. 1."

Said tract of land also includes a portion of a tract of 90 acres granted by the Commonwealth of Virginia to Humphrey Trent by patent dated July 3, 1860. A certified copy of said patent is filed herewith, as a part hereof, marked "Exhibit Turkey Creek Land Company, Tract No. 15, Patent No. 2."

Said tract also includes a portion of a tract of 100 acres granted by the State of West Virginia to David Cline by patent dated

the 31st day of January, 1871. A certified copy of said patent is filed herewith, as a part hereof, marked "Exhibit Turkey Creek Land Company, Tract No. 16, patent No. 3."

page 229.] Said tract of land includes a portion of a tract of 250 acres conveyed by L. D. Chambers, Commissioner of School Lands for Logan County, to Alexander Trent, by deed dated March 12th, 1889. A certified copy of said deed will be filed herewith marked "Exhibit Turkey Creek Land Company, Commissioner's Deed, Tract No. 16."

Said tract also includes a portion of a tract of 119½ acres conveyed by L. D. Chambers, Commissioner of School Lands, to Moses Mounts, by deed dated January 15. 1889. A certified copy of said deed is filed herewith, as a part hereof, marked "Exhibit Turkey Creek Land Company, Tract No. 16, Commissioner's Deed No. 2."

Certified copies of the deeds and conveyances under which your respondent claims said tract of land will be filed herewith marked Exhibit Turkey Creek Land Company Title Papers Tract No. 16"

TRACT NO. 17.

This respondent avers that it is the owner in fee simple of a certain tract of land containing 15 acres situate on Gilbert Creek in Mingo County, the mineral right to which was conveyed to this respondent by Charles B. Taylor and others by deed bearing date on the 5th day of April, 1902, and recorded in the office of the clerk of the county court of Mingo County in Deed Book No. 10, page 67, and the surface of said land was conveyed to this respondent by C. W. Campbell and others by deed bearing date on the ——— day of ————, ————, and recorded in Mingo County in Deed Book No. ———, page———.

Respondent would show that said tract includes a part of a 90 acre tract granted by the Commonwealth of Virginia to Humphrey Trent by patent dated July 3, 1850. A certified copy said patent is filed herewith, as a part hereof, marked "Exhibit Tract No. 17."

Said tract of land also includes a portion of a tract 48 acres granted by the Commonwealth of Virginia to Frederick Trent by

patent dated the 29th day of November, 1845. A certified copy of the said patent is filed herewith marked "Exhibit

page 230.] Tract No. 17."

Said tract of land also includes a portion of a tract of 100 acres granted by the State of West Virginia to David Cline by patent dated January 31, 1871. A certified copy of the said patent is filed herewith marked "Exhibit Tract No. 17."

Said Tract of land also includes a portion if a tract of 250 acres conveyed by L. D. Chambers, Commissioner of School Lands, to Alex Trent, by deed dated March 12, 1889. A certified copy of said deed will be filed herewith and marked "Exhibit Turkey Creek Land Company, Tract No. 17, Commissioner's Deed."

Certified copies of the deeds and conveyances under which this respondent holds title to said tract will be filed herewith, marked "Exhibit Turkey Creek Land Company Title Papers Tract No. 17."

TRACT NO. 18.

This respondent avers that it is the owner of the minerals in, on and under a certain tract of land situate on Gilbert Creek in Mingo County, West Virginia, containing 44 acres, which minerals rights were conveyed to this respondent by Charles B. Taylor and others by deed bearing date April 5, 1902, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book No. 10. page 67.

This respondent would show that said tract is the same tract granted as a tract of 39 acres by the State of West Virginia to Johnson Trent by patent dated the 21st day of March, 1868. A certified copy of said patent is filed herewith, as a part hereof, marked "Exhibit Turkey Creek Land Company, Tract No. 18." Certified copies of the deeds and conveyances under which this respondent claims title to said tract will be filed herewith, marked "Exhibit Turkey Creek Land Company Title Papers, Tract No. 18."

page 231.] TRACT NO. 19.

This respondent avers that it is the owner of the minerals in, on, and under a certain tract of land, situate on the

waters of Spring Fork of Ben Creek in Mingo County, West Virginia, containing 19½ acres conveyed to this respondent by Charles B. Taylor, and others, by deed dated April 2, 1902, and recorded in the office of the clerk of the county court of Mingo County, in Deed Book No. 10, page 67.

Respondent would show that said tract of land is a portion of the Robert Morris 480,000 acre grant and that the title passed by a regular chain of conveyances until it vested in this respondent as aforesaid.

Certified copies of the deeds and proceedings under which this respondent holds title to said tract of land will be filed herewith marked, "Exhibit Turkey Creek Land Company, Title Papers, Tract No. 19."

TRACT NO. 20

This respondent avers that it is the owner of all the minerals in, under and upon a certain tract containing 99½ acres, situate on Gilbert Creek in Mingo County, West Virginia, conveyed to this respondent by Charles B. Taylor, and others, by deed dated the 5th day of April, 1902, and recorded in the office of the clerk of the county court of Mingo County in deed book No. 10, page 67.

This respondent would show that the said tract is included in a tract granted as 112 acres by the State of West Virginia, to Jacob Cline by patent dated July 22, 1867. A certified copy of said patent is filed herewith as a part hereof marked, "Exhibit Turkey Creek Land Company Tract No. 20."

Certified copies of the deeds and conveyances under which this respondent claims title to the said tract will be filed herewith marked "Exhibit, Turkey Creek Land Company, Title Papers Tract No. 20."

TRACT NO. 21.

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This respondent avers that it is the owner of all the mineral in, on, and under a certain tract of land contain-

ing 142 acres, situate on the waters of Gilbert Creek in Mingo County, West Virginia, conveyed to this respondent by Charles B. Gaylork and others, by deed dated the 5th of April, 1902 and recorded in the office of the clerk of the County Court of Mingo County in Deed Book No. 10, page 67.

This respondent would show that the said tract is a portion of a tract of 200 acres granted by the Commonwealth of Virginia to James Spratt by patent granted in pursuance of a survey made March 20, 1856, and recorded in Surveyor's Book "B" page 612, of Logan County, A certified copy of said patent will be filed herewith marked, "Exhibit Turkey Creek Land Company, Tract No. 21."

Said tract also includes a tract of 28 acres granted by the Commonwealth of Virginia to Edward Mason by patent dated July 13 1835. A certified copy of said patent is filed herewith marked, "Exhibit Turkey Creek Land Company, Tract No. 21, Patent No. 1."

Certified copies of the deeds and proceedings under which this respondent claims title to said tract will be filed herewith marked, "Exhibit Turkey Creek Land Company Title Papers, Tract No. 21."

TRACT NO. 22.

This respondent avers that it is the owner in fee simple of a tract of 243 acres situate on the waters of Spring Fork of Ben Creek, the mineral right of which were conveyed to this respondent by Charles B. Taylor, and others, by deed dated the 5th day of April, 1902, and recorded in the office of the Clerk of the county court of Mingo County in Deed Book No. 10, page 67; the surface of said tract was conveyed to this respondent by George W. Hatfield by deed dated the ..... day of .....

This Respondent should show that the said tract includes a portion of a tract of 395 acres granted by the Com-
page 233.] monwealth of Virginia to William Collins by patent dated the ..... day of .....

A certified copy of said patent will be filed herewith marked,

"Exhibit Turkey Creek Land Company, Tract No. 22, Collins Patent."

Said tract also includes a portion of a tract of 1300 acres granted by the Commonwealth of Virginia to Warren M. Alderson by patent dated the 1st day of November, 1859. A certified copy of said patent is filed herewith marked, "Exhibit Turkey Creek Land Company, Tract No. 22, Patent No. 1," and further includes all or a portion of a tract of 24 acres granted by the Commonwealth of Virginia to William Collins filed as a part of title papers in Tract No. 7 hereof.

Said tract also includes a portion of a 1000 acre tract known as the Samuel Baugh tract which tract is owner by this respondent and will be hereafter referred to in this answer.

Certified copies of the deeds and conveyances under which this respondent holds title to the said tract will be filed herewith marked "Exhibit Turkey Creek Land Company, Title Papers Tract No. 22."

TRACT NO. 23.

This respondent avers that it is the owner of all the mineral in, under, and upon a tract of 105 acres situate on the head of Big Lick Fork of Gilbert Creek in Mingo County, West Virginia, conveyed to this respondent by Charles B. Taylor and others, by deed dated April 5, 1902, and recorded in the office of the clerk of the county court of Mingo County in Deed Book No. 10, page 67.

This respondent would show that said tract includes a portion of a tract of 75 acres granted by the State of West Virginia to David Cline by patent dated April 13, 1868. A certified copy of said patent is filed herewith as a part hereof marked, "Exhibit Turkey Creek Land Company, Tract No. 23, Patent No. 1."

Certified copies of the deeds and conveyances under which this respondent holds title to this tract will be filed herewith marked,

"Exhibit Turkey Creek Land Company Title Papers, Tract No. 23."

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TRACT. NO. 24.

This respondent avers that it is the owner of all the mineral in, under, and upon a certain tract containing 30½ acres situate on Gilbert Creek in Mingo County, West Virginia, conveyed to this respondent by Charles B. Taylor and others, by deed dated April 5, 1902, and recorded in the office of the clerk of the county court of Mingo County in Deed Book No. 10, page 67.

This respondent would show that said tract includes a portion of a 48 acre tract granted by the Commonwealth of Virginia to Frederick Trent by patent dated November 25, 1845. A certified copy of said patent is filed herewith marked, "Exhibit Turkey Creek Land Company, Tract No. 24."

Said tract also includes a part of 90 acres granted by the Commonwealth of Virginia to Humphrey Trent by patent dated July 3, 1860. A certified copy of said patent is filed herewith marked, "Exhibit Turkey Creek Land Company Tract No. 24."

Said tract also includes a part of a 250 acre tract conveyed by L. D. Chambers, Commissioner of School Lands for Logan County, to Alexander Trent, dated March 22, 1889. A certified copy of said deed will be filed herewith marked "Exhibit Turkey Creek Land Company, Tract No. 24."

Certified copies of deeds and proceedings under which this respondent holds title to said tract will be filed herewith marked, "Exhibit Turkey Creek Land Company Title Papers, Tract No. 24."

TRACT NO. 25.

This respondent avers that it is the owner of all the minerals in, under, and upon a tract containing 89½ acres situate on Gilbert Creek in Mingo County, West Virginia, conveyed to this respondent by Charles B. Taylor, and others, by deed dated April 5, 1902 and recorded in the office of the clerk of the county court

of Mingo County in Deed Book No. 10, page 67.

This respondent would show that said tract
page 235.] includes a portion of a tract of 57 acres granted by the Commonwealth of Virginia, to Humphrey Trent by patent dated December 1, 1857. A certified copy of said patent is filed herewith marked, "Exhibit Turkey Creek Company, Tract No. 25."

Said tract also includes a portion of a 17 acre tract granted by the Commonwealth of Virginia to Jacob Cline dated the ..... day of ....., 1861. A certified copy of said patent will be filed herewith marked, "Exhibit Turkey Creek Land Company, Tract No. 25."

Certified copies of the deeds and proceedings under which this respondent holds title will be filed herewith marked, "Exhibit Turkey Creek Land Company Title Papers Tract No.25."

TRACT NO. 26.

This respondent avers that it is the owner of all the mineral in, on, and under a certain tract of land containing 140 acres situate on Gilbert Creek in Mingo County, West Virginia, conveyed to this respondent by Charles B. Taylor, and others, by deed dated April 5, 1902, recorded in the office of the clerk of the county court of Mingo County in Deed Book No. 10, page 67.

This respondent would show that this tract is the tract conveyed as 104 acres by L. D. Chambers, Commissioner of *Schoold* Lands for Logan County to Moses Mounts by deed dated October 20, 1885. A certified copy of said deed is filed herewith marked "Exhibit Turkey Creek Land Company, Tract No. 26."

Certified copies of the deeds and proceedings under which this respondent holds title to this tract will be filed herewith marked, "Exhibit Turkey Creek Land Company Title Papers, Tract No. 26."

TRACT NO. 27.

This respondent avers that it is the owner of all the mineral in,

under, and upon, a certain tract of land containing 154 acres situate on Gilbert Creek in Mingo County, West Virginia, conveyed to this respondent by Charles B. Taylor, and others, by deed bearing date April 5, 1902, and recorded in Mingo County in Deed Book No. 10, page 67.

[page 236.]

Respondent would show that said tract includes a portion of a tract of 48 acres granted by the Commonwealth of Virginia to Frederick Trent by patent dated November 29, 1845. A certified copy of said patent is filed herewith marked, "Exhibit Turkey Creek Land Company, Tract No. 27."

Said tract also includes a portion of 75 acres granted by the State of West Virginia to David Cline by patent dated the 13th of April, 1868. A certified copy of said patent is filed herewith marked, "Exhibit Turkey Creek Land Company, Tract No. 27."

Said tract also includes a portion of a 90 acre tract granted by the Commonwealth of Virginia, to Humphrey Trent by patent dated July 3, 1860. A certified copy of said patent is filed herewith marked, "Exhibit Turkey Creek Land Company, Tract No, 27."

Certified copies of the deeds and proceedings under which this respondent claims title will be filed herewith marked, "Exhibit Title Papers, Turkey Creek Land Company, Tract No. 27."

TRACT NO. 28.

This respondent avers that it is the owner of all the mineral in, on, and under a tract of 140 acres situate on Gilbert Creek in Mingo County, West Virginia, conveyed to this respondent by Charles B. Taylor and others.

This respondent would show that said tract includes a portion of a 57 acre tract granted to Humphrey Trent by the Commonwealth of Virginia by patent dated the 1st day of December, 1857. A certified copy of said patent is filed herewith marked, "Exhibit Turkey Creek Land Company, Tract No. 28."

Said tract also includes a portion of a 19 acre tract granted

by the Commonwealth of Virginia to Jacob Cline by patent dated February 5, 1861. A certified copy of said
page 237.] patent will be filed herewith marked, "Exhibit Turkey Creek Land Company, Tract No. 28."

Certified copies of the deeds and proceedings under which this respondent claims title to the said tract will be filed herewith marked, "Exhibit Turkey Creek Land Company, Title Papers, Tract N. 28."

TRACT NO. 29.

This respondent avers that it is the owner in fee simple of a tract of land containing 25 acres situate in Four Pole Creek in Mingo County, West Virginia, conveyed to this respondent by Charles B. Taylor and others.

Respondent would show that said tract is a portion of a tract of 58 acres granted by the Commonwealth of Virginia to Harvey Bailey dated September 30, 1848. A certified copy of said patent is filed herewith marked, "Exhibit Turkey Creek Land Company, Tract No. 29."

Certified copies of the deeds and proceedings under which this respondent claims title to said tract will be filed herewith marked, "Exhibit Turkey Creek Land Company, Title Papers, Tract No. 29."

TRACT NO. 30.

This respondent avers that it is the owner in fee simple of a certain tract of land containing 42 acres situate on Fourpole Creek in Mingo County, West Virginia, conveyed to this respondent by Harvey Bailey.

This respondent would show that said tract of land is a portion of a tract of 123 acres granted by the Commonwealth of Virginia to David Cornett by patent dated August 18, 1858. A certified copy of said patent will be filed herewith marked "Exhibit Turkey Land Company, Tract No. 30."

page 238.] Certified copies of the deeds and proceedings under which this respondent claims title to this tract will

be filed herewith marked "Exhibit Turkey Creek Land Company Title Papers, Tract No. 30."

TRACT No. 31.

This respondent avers that it is the owner in fee simple of a tract of land containing 590 acres situate on Four pole creek in Mingo County, West Virginia, conveyed to this respondent by William G. W. Iaeger by deed dated August 16, 1902.

This respondent would show that said tract of 150 acres granted by the Commonwealth of Virginia to Christian Cline by patent dated November 1, 1858. A certified copy of said patent is filed herewith, as part hereof, marked "Exhibit Turkey Creek Land Company, Tract No. 31."

Said tract also includes a tract of 58 acres granted by the Commonwealth of Virginia to Thomas Mullins by patent dated October 6, 1845. A certified copy of said patent will be filed herewith marked "Exhibit Turkey Creek Land Company Tract No. 31."

Said tract also includes a portion of a tract of 123 acres granted by the Commonwealth of Virginia to David Cornett by patent dated August 18, 1858. A certified copy of said patent will be filed herewith, as a part hereof, marked "Exhibit Turkey Creek Land Company Tract No. 31." Said tract also includes a tract of 144 acres granted by the Commonwealth of Virginia to David Cornett by patent dated August 20, 1858. Said tract also includes a tract of 58 acres granted by the Commonwealth of Virginia to Harvey Bailey by patent dated September 30, 1848. A certified copy of said patent will be filed herewith, as part hereof, marked "Exhibit Turkey

page 239.] Land Company Tract No. 31."

Said tract also includes a tract of 35 acres granted by the Commonwealth of Virginia to W. R. Lee by patent dated the ..... day of ....., ... A certified copy of said patent will be filed herewith, marked "Exhibit Turkey Creek Land Company, Tract No. 31. Said tract also

includes a tract of 150 acres granted by the Commonwealth of Virginia to Warren Alderson by patent dated the 19th day of April, 1854. A certified copy of said patent will be filed herewith marked "Exhibit Turkey Creek Land Company, Tract No. 31.

Certified copies of the deeds and proceedings under which this respondent claims title to this tract will be filed herewith marked "Exhibit Turkey Creek Land Company, Title Papers, Tract No. 31."

TRACT No. 32.

This respondent avers that it is the owner in fee simple of a certain tract of land, containing 42 acres, situate on the Lick Branch of Tug River, conveyed to this respondent by R. N. Taylor and wife by deed dated the 16th day of April, 1902, and recorded in the office of the clerk of the county court of Mingo County. Said tract of land is the same tract granted by the Commonwealth of Virginia to John Dempsey, Jr., by patent dated May 1, 1855. A certified copy of said patent is filed herewith, marked "Exhibit Turkey Creek Land Company, Tract No. 32."

Certified copies of the deeds and conveyances under which this respondent claims title to this tract will be filed herewith marked "Exhibit Turkey Creek Land Company, Title Papers, Tract No. 32."

TRACT NO. 33.

This respondent avers that it is the owners in
page 240.] fee simple of a certain tract of land containing 118 acres situate on the ridge between Tug River and Ben Creek in Mingo County, West Virginia, conveyed to this respondent by W. J. Williamson, Trustee, and others, by deed dated October 31, 1902, and recorded in the office of the clerk of the county court of Mingo County in Deed Book No. 10, page 453.

Certified copies of the deeds and conveyances under which this respondent claims title to this tract will be filed herewith

marked "Exhibit Turkey Creek Land Company, Title Papers, Tract No. 33."

TRACT NO. 34.

This respondent avers that is the owner in fee simple of a certain tract of land containing 736.8 acres, situate on Fourpole Creek in said Mingo County, West Virginia, conveyed to it by Charles H. Pyle, Trustee, by deed bearing date on the—.... day of ....., ..., and recorded in the office of the clerk of the county court of Mingo County in Deed Book No. ....., page.....

This respondent would show that said tract of land is a portion of a grant of 1500 acres by the Commonwealth of Virginia to Simeon Justice, bearing date on June 27, 1862. A certified copy of said patent is filed herewith, as a part hereof, marked "Exhibit Turkey Creek Land Company, Tract No. 34; and would also show that this respondent is the owner of the title of Henry C. King to the 500,000 acre Robert Morris grant involved in this suit in so far as said 500,000 acre tract interlocks with said Tract No. 34.

Certified copies of the deeds and proceedings under which this respondent claims the said tract of land will be filed herewith marked "Exhibit Turkey Creek Land Company, Title Papers No. 34."

page 241.] TRACT NO. 35.

This respondent avers that is it the owner in fee simple of a certain tract of land containing 961 acres situate on the waters of Ben Creek and the waters of Gilbert Creek in Mingo County, West Virginia, conveyed to it by R. C. Ellison and William McGee by deed bearing date on the 28th day of August, 1902, and recorded in said Clerk's office in Deed Book No. 10, page 426.

This respondent would show that the said tract of land is a portion of a grant of 1300 acres to Warren Alderson bearing date November 1, 1859, and is also a portion of two certain

tracts of land containing 250 and 205 acres, respectively, conveyed by L. D. Chambers, Commissioner of School Lands for Logan County, West Virginia, to Alex Trent by deeds of record in the office of the clerk of the county court of Logan County, West Virginia.

Certified copies of said grant to Warren Alderson and said deeds to Alex Trent are herewith filed, marked, "Exhibit Turkey Creek Land Company, Tract No. 35." Patent, Deed No. 1 and Deed No. 2, respectively. Your respondent would further show that said tract of land is made up of a portion of 1000 acres, known as the Samuel Baugh Tract, which 1000 acres is a portion of 500,000 acres proceeded against in this suit. Certified copies of the deeds and proceedings under which this respondent holds title to the said tract of land will be filed herewith marked, "Exhibit Turkey Creek Land Company Title Papers, Tract No. 35."

TRACT No. 36.

Respondent avers that it is the owner of a tract of 143.50 acres, situate on Tug River in said Mingo County, West Virginia, which said tract is made up of all or portion

page 242.] of three certain grants by the Commonwealth of Virginia, the first of which is to William Lester and M. Charles for 100 acres bearing date September 6, 1826, and the second to Thomas Mullins and Henry Bailey for 100 acres bearing date the 31st day of October, 1848, and the third to John Mullins for 15 acres.

Certified copies of the deeds and proceedings under which marked "Exhibit Turkey Creek Land Company, Tract No. 36, Patents 1, 2, and 3, respectively.

Certified copies of the deeds and proceedings under which this respondent claims title to the said tract of land will be filed herewith marked "Exhibit Turkey Creek Land Company, Title Papers No. 36."

This respondent avers that it is the owner of each and all

of the foregoing tracts of land; that it and those under whom it claims have had open, notorious and exclusive possession of said lands, adverse to any and all other claimants thereto for more than ten years prior to the institution of this suit; that it and those under whom it claims have paid all State and other taxes assessed against the said tracts of land. This respondent therefore, denies that said tract of 500,000 acres of land proceeded against in this suit, in so far as the same interlocks with any and all of the above named tracts of land, is in the State, and denies the right of the State of West Virginia to sell the same for the benefit of the school fund, and further denies that there any taxes due the State of West Virginia on such portions of said 500,000 acre tract.

This respondent further avers that, in so far as the title to such portion of said 500,000 acre tract as interlocks with the above tracts, was forfeited to the State of West Virginia, said title so forfeited was, under and by virtue of section 2 of article 13 of the Constitution of the State of West Virginia transferred to and became vested in this respondent, and here again denies the right of the complainant to maintain this suit, and further denies the right of any one other than this respondent to redeem such part of said 500,000 acre tract of land.

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This respondent further avers that a large portion of the above tracts of land owned by this respondent lies within that portion of said 500,000 acre known as the Smith-Fougeray 13,000 acre tract, the title to which defendant, H. C. King does not own, and therefore has no right to maintain his petition to redeem such part.

This respondent by making and filing this its amended and supplemental answer makes no admissions as to the proper location of the boundary line of said 500,000 acre grant, and hereby reserves unto itself the right and privilege of maintaining the position it has heretofore taken as to the proper location of said boundary.

This respondent would further show that the said tracts of

land, together with the tracts set forth in its original and first amended and supplemental answer, constitute one compact body of land containing some 7871.49 acres; that by reason of the said parcel of land being made up of so many smaller tracts it is difficult for this respondent to ascertain in all cases the sources of its title. The respondent, however, has went forth its various titles, and it now has knowledge of them, but reserves unto itself the further right at any time to file a new and amended answer giving any additional information that may hereafter come to it affecting or appertaining to its title to the said parcels of land, and to also file such amended and supplemental answer as to any lands it may here-
[page 244.] after ascertain that it is the owner of lying within the said 500,000 acre tract, which is not covered by the titles herein set forth.

This respondent again denies that the complainant has the right to proceed against that portion of the said 500,000 acre tract which interlocks with the tracts of land herein set forth; and here again avers that all taxes have been paid on the said land, but further says that if it should be mistaken in this, then it avers that it is the only person entitled under the laws of the State of West Virginia to redeem any portion of said lands so forfeited, which it prays that it may be permitted to do by the payment of all taxes, interest and charges against same.

This respondent further denies any and all other allegations in said original and supplemental bills not herein expressly admitted or denies, and having fully answered prays to be hence dismissed with its costs in this behalf expended.

By way of due authentication hereof said Turkey Creek Land Company has caused these presents to be signed in its corporate name, by its president, and caused its corporate seal to be hereto affixed.

TURKEY CREEK LAND COMPANY.

By A. MOORE, *President.*

page 245.] ANSWER OF KING TO SECOND SUPPLEMENTAL ANSWER OF TURKEY CREEK LAND COMPANY. (Filed Dec. 6, 1905.)

IN THE CIRCUIT COURT OF WEST VIRGINIA, FOR THE COUNTY OF MARION.

State of West Virginia
vs.) *In Chancery.*
Henry C. King et. als.

Answer of Henry C. King to the so-called second amended and supplemental answer of Turkey Creek Land Company to the original and Six Amended Bills filed herein, but which so-called answer is supplemental to a pleading in the nature of an original bill by said Turkey Creek Land Company against said King, filed herein.

To the Honorable John W. Mason, Judge of said court:

Now comes the defendant, Henry C. King, and for answer to said so-called second amended and supplemental answer of Turkey Creek Land Company, or to so much thereof as this defendant is advised it is material for him to answer, says:

That it may be true that said Turkey Creek Land Company set out all the knowledge it had concerning the land it claimed on Turkey Creek at the time it filed its original so-called answer herein, but denies that any subsequent survey of the John Dempsey, Jr. 1191 acre tract shows that any other small tracts are included within it or that any other tracts are included in said 1191 acre tract.

That it may be true that said Turkey Creek Land Company made pretended or attempted purchases of the sundry tracts of land enumerated in its said so-called second amended and supplemental answer, but this defendant denies that any title passed to said Company thereby or that said Company has any valid title to such lands, except the land conveyed to it by this defendant and Charles H. Pile, trustee, mentioned as tract No. 34—736.8 acres.

That this defendant has no greater knowledge of the sources of the claim of title of said Company to the lands mentioned in its said so-called answer than the little said Company

page 246.] therein professes to have; but his knowledge is sufficient to enable him to allege and he does allege that the origin and source of said title to a large and valuable part of said land is a title factory established by the organizers of said Company in about 1900 and since industriously operated by said Company by making alleged re-surveys of tracts and original surveys "running in" land not therefore embraced in any deed or patent except this defendant's Morris grant, and securing pretended deeds therefor, and otherwise getting deeds for land from persons who had neither title, color of title, possession or previous claim thereto.

That the several tracts mentioned in said so-called answer as parts of the Morris 480,000 acres are not parts of the Robert Morris 480,000 acre grant nor parts of any grant except this defendant's 500,000 acre grant, nor does the pretended claim of title of said Turkey Creek Land Company to said parcels connect with any grant, or with any other valid source of title, but trace to one Jesse R. Irwin who pretended claim of title to said land had been sold to the State for unpaid taxes long prior to the execution of the several pretended deeds from him under which said Company claims and has never been redeemed.

That this defendant denies that V. A. Wilder, as attorney in fact of this defendant, or M. F. Stiles, as attorney for this defendant, ever waived or quit-claimed, or had any power or authority to waive or quit-claim any right that this defendant had in the parcel of land mentioned as tract No. 3, and as 136 1-2 acres on Brushy fork or Fourpole creek.

That this defendant is unacquainted with the chain of title to many of the tracts or parcels of land claimed by said Company or with the history thereof, and said so-called amended

page 247.] answer gives little information concerning them, but this defendant denies that all the taxes charged or chargeable against said parcels have been paid by said Company

or by any one under whom it claims, and avers that all taxes have not been charged upon said lands that ought to have been charged and paid. The tract No. 32, being 42 acres on Lick Branch, patented to John Dempsey, Jr. May 1, 1855, was never conveyed to said Company by any one regularly connected with said grant, and said Company has no valid claim thereto. Said tract was charged with taxes on the land books of Mingo county for the year 1900 in the name of A. M. Bailey, who claimed said land mediately under said Dempsey, and, being returned delinquent for the non-payment of said taxes, was sold in 1902 to the State and has never been redeemed, as will appear from the certificate of the Auditor of West Virginia filed herein. And a suit in the name of the State is now pending in the circuit court for Mingo county to sell said land. No person claiming under said 42 acre patent ever had any actual possession of said land. Portions of the Dempsey 1191 acre tract were wholly omitted from the land books of Logan county and not charged with taxes for more than five successive years after the year 1873, and were thereby forfeited, and other portions were sold to the State for delinquent taxes and none of said portions was redeemed but they remain forfeited, as appears from the certificate of the Auditor on file herein.

That this defendant denies that the said Turkey Creek Land Company or those under whom it claims have had open, notorious, exclusive or other actual possession of the lands claimed by said Company for a period of ten consecutive years prior to the institution of this suit, or for any period of time prior thereto, and avers that on the contrary thereof this defendant has had actual possession thereof continuously since the year 1893, and is the true and only legal and equitable owner thereof.

That this defendant denies that said Company and those under whom it claims have paid all taxes chargeable upon said lands and denies that said Company has any right to pay such unpaid taxes or any right to redeem any of said lands, or any title thereto capable of redemption.

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That this defendant denies that said Robert Morris 500,000 acre grant is forfeited, and denies that the title thereto or

to any part thereof has been transferred to said Turkey Creek Land Company, or to any one under whom it claims, under section 3 of article 13 of the Constitution of West Virginia or under any other law; and alleges that said section 3 and all other provisions of the Constitution and statutes of said State that attempt to forfeit land and transfer the title to a private adverse claimant are in contravention of the Constitution of the United States.

That the tracts mentioned in said so-called answer as "school land" or as "sold as school land" were illegally sold in certain void and pretended proceedings in the circuit court for Logan county to sell said land as "waste and unappropriated," to which proceeding neither this defendant nor any one under whom he claims was a party, and said sales did not pass nor purport to pass a valid title to the land, and the State of West Virginia had no title to pass thereby. And the State of West Virginia and the Commonwealth of Virginia had no title to the land described in the patents referred to in said so-called answer, except to such as was described and embraced in those patents issued prior to 1838, and the Morris grant prior to that time was forfeited land and not waste and unappropriated land, and was not subject to re-grant; and all said patents are void and inoperative.

That all the said parcels of land claimed by said Company are part and parcel of said 500,000 acre grant, and lie wholly within the bounds thereof.

page 249.] That this defendant here refers to his answer to the original so-called answer of the said Turkey Creek Land Company, and its so-called amended and supplemental answer, and makes the same part hereof to the same extent and effect as if all the allegations therein contained were here set out in extenso and reiterated.

Wherefore this defendant prays that it be adjudged that the said Turkey Creek Land Company is not the owner of the land claimed by it and has no right thereto, and that this defendant is the owner thereof except the parcel heretofore conveyed by this defendant and Charles H. Pile, trustee; and that it be decreed that this defendant has the right to the possession of the said land claimed by

him herein, and that he be given the possession of such parcels thereof as are not now in his actual possession. And this defendant will ever pray.

HENRY C. KING,
By Counsel.

MAYNARD F. STILES,
W. S. MEREDITH,
Solicitors.

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page 250] PETITION OF VERNON G. BRUCE.
(Filed July 10, 1905)

IN THE CIRCUIT COURT OF MARION COUNTY.
JULY, 1905.

State of West Virginia
vs. (*In Chancery.*
Henry C. King, et al.

The separate petition and answer of Vernon G. Bruce filed in the above cause.

To the Honorable John W. Mason, Judge of said Court:

The said Vernon G. Bruce comes and says, that on the 15th day of December, 1796, the Commonwealth of Virginia, by letters patent of that date, granted to one John Green a tract of 84,000 acres, which had been surveyed on or before the 20th day of July, 1795, by virtue of a certain entry made with the surveyor of Kanawha county, on the ————day of————1795; all of which will more fully appear by reference to copy of said letters patent already filed in the above styled cause.

That on or about the 8th day of December, 1798, by deed bearing date on that day, and recorded in Kanawha county in Book A of Deeds, Page 261, the said John Green conveyed to Isaac Wharton and David Lewis an undivided three-quarter part of the said 84,000 acres granted to him by the patent aforesaid, as will more fully

appear by duly certified copy of said deed herewith filed as part of this petition, and marked Exhibit B—1.

That the said John Green died intestate and unmarried prior to 1814, leaving his sisters, Sarah Green and Ann Wharton, wife of ————Wharton, his only heirs-at-law, and others hereinafter referred to, to whom his undivided interest in said undivided one-

page 251] quarter interest in said 84,000 acres descended and vested. That the said Isaac Wharton died prior to April 11th, 1808, leaving a last will bearing date June 11th, 1802, with a codicil thereto, bearing date May 18th, 1805, which said will was duly proved before the Register of Wills of the City and County of Philadelphia, in the State of Pennsylvania, on 11th of April, 1808, and admitted to probate and recorded in Book 2 of Wills in said Register's office on Page 285; as will appear by duly exemplified copy of said will and probate herewith filed and made part of this answer and petition, and marked Exhibit B-2. That in and by said Will Said Isaac Wharton appointed his widow, Margaret Rawle Wharton, his brother, Joseph Wharton, his brother-in-law, William Rawle, his friends, Owen Jones and Abijah Dawes, and his son, Francis Rawle Wharton, (when he should have attained the age of 21 years) his executors, and in and by said will authorized and empowered said executors, and the survivors and surviving of them, to sell and convey in fee simple, on such terms as they might think most for the interest of his children, all his lands in the State of West Virginia, held in company with Wharton and Lewis, and that the said Margaret Rawle Wharton, Joseph Wharton, William Rawle, Owen Jones and Francis Rawle Wharton duly qualified as executors of said Isaac Wharton, and that letters testimentary were duly granted to them, as will appear by said Exhibit B-2.

That on or about the 5th day of August, 1814, the said Margaret Rawle Wharton, William Rawle and Francis Rawle Wharton, executors of Isaac Wharton, deceased, Sarah Green and Anna Wharton, and ————Wharton, her husband, (the said Sarah and Anna being the sole heirs-at-law of John Green, deceased,

and the said David Lewis, by deed bearing date on or about the day and year last aforesaid and recorded in the office
page 252.] of the Clerk of the County Court of Kanawha County, in Book D of Deeds, page 201, conveyed to the Rev. Joseph Willard said 84,000 acres, as will more fully appear by duly certified copy of said deed herewith filed and made part of this petition and answer, and marked Exhibit B-3. That said deed recites that said Isaac Wharton died seized of an undivided one-half of three-quarters of said tract, leaving his last will, in and by which he authorized his executors to sell the same. That said John Green died intestate and unmarried and seized of an undivided one-quarter of said tract, which descended to his sisters, the said Anna Wharton and Sarah Green, his sole heirs-at-law.

That the said Rev. Joseph Willard died intestate at Marietta, in the State of Ohio, on the 23rd day of September, 1823; his wife, Elizabeth, having died three days previous, and on the 20th of September, 1823. That said the Rev. Joseph Willard left him surviving six children, viz:

George J. Willard,
Caroline, who married Henry P. Wilcox,
Elizabeth, who married Thomas D. Carpenter,
Joseph A. Willard,
Ellen Willard, who married Dr. Angus M. C. Bane;
and Peter H. Willard, *hos* only heirs-at-law, to whom the said 84,000 acres descended.

That said Joseph A. Willard died when he was 20 years of age, intestate and unmarried, leaving his five brothers and sisters aforesaid his only heirs-at-law, to whom his interest in said 84,00 acres descended.

That the said Peter H. Willard died June 16th, 1864, leaving his widow, Mary H. and two children, viz:

Joseph E. Willard and Henry C. Willard, his only heirs-at-law: that the said Mary H. Willard, widow of Peter H.
page 253] Willard, died intestate December————1887: that the said Henry C. Willard died in the month of July,

1886, intestate, and without issue, leaving his brother, Joseph E. Willard, his only heir-at-law, to whom his interest in said 84,000 acres descended, and also leaving a widow, Nettie, who afterwards married Joseph Schoeff.

That afterwards, and on or about the 29th day of October, 1902, the said Joseph E. Willard, by deed bearing date on that day, granted and conveyed to William M. Risdon, all his interest and estate to wit: An undivided one-fifth in and to the said 84,000 acres; as will appear by said deed herewith filed and made part of this answer and petition, and marked Exhibit B-4.

That afterwards, and on or about the 3rd day of October, 1902, the said Nettie Schoeff, formerly Nettie Willard, widow of Henry C. Willard, deceased, and John Schoeff, her husband, by deed bearing date on that day, granted and conveyed to said William M. Risdon, all her right, title, interest and estate in and to the said 84,000 acres; as will more fully appear by said deed herewith filed and made a part of this petition and answer, and marked Exhibit B-5.

That the said Elizabeth Carpenter, daughter of the said the Rev. Joseph Willard, died in 1835, intestate, leaving her husband, Thomas D. Carpenter and four children, viz:

Marion E., who married Alfred G. Enos,

Thomas D., Jr.,

William B. Carpenter; and

Francis E., who married Alexander G. Sheldon, her only heirs-at-law. That the said Thomas D. Carpenter, husband of said Mary Carpenter, deceased, died in 1869; that the said Thomas D. Carpenter, son of Elizabeth Carpenter, William B.

page 254.] Carpenter and his wife, and the said Marion E. Enos, on or about the 1st day of July, 1893, by deed bearing date on that day, conveyed to said William M. Risdon all their right, title, interest and estate, being *and* undivided three-twentieths, in and to the said 84,000 acres; as will appear by said deed herewith filed and made part of this answer and petition, and marked Exhibit B-6. That at the date of the execution of said

deed, the said Alfred G. Enos, the husband of Marion E. Enos, was dead.

That the said Frances E. Sheldon, daughter of said Elizabeth Carpenter, died September 4, 1864, intestate, leaving her surviving her husband, Alexander G. Sheldon and one child, Francis E. Sheldon, her only heirs-at-law, to whom her interest in said 84,000 acres descended. That said Alexander G. Sheldon, husband of said Frances E. Sheldon, died December 9, 1886.

That the said Francis E. Sheldon, and his wife, on or about the 20th day of October, 1893, by deed bearing date on that day, conveyed to said William M. Risdon, all his right, title, interest and estate, to wit: An undivided one-twentieth in said 84,000 acres; as will more fully appear by said deed herewith filed and made part of this petition and answer, and marked Exhibit B-7.

That said Caroline Wilcox, the daughter of the said the Rev. Joseph Willard, died September 12th, 1836, intestate, leaving her surviving her husband, Henry P. Wilcox, and four children, viz:

Julia Caroline, who married Henry Martin Cornell,

Suzan Rebecca, who married Edmund R. Harrington,

Charles Henry, and

Joseph Morgan,

her only heirs-at-*law*, to whom her interest in said
page 255.] 84,000 acres descended. That said Henry P. Wilcox, husband of said Caroline Wilcox, died March 7th, 1848.

That the said Joseph Morgan Wilcox, on or about the 12th day of September, 1893, by deed bearing date on that day, granted and conveyed to said William M. Risdon, all his right, title, interest and estate, to wit: An undivided one-twentieth part in and to the said 84,000 acres; as will appear by said deed herewith filed and made part of this answer and petition, and marked Exhibit B-8.

That the said Suzan R. Harrington and Edmund R. Harrington, her husband, on or about the 13th day of March, 1893, by deed bearing date on that day, granted and conveyed to said Wil-

liam M. Risdon, all their right, title, interest and estate, to wit: An undivided one-twentieth in and to the said 84,000 acres; as will appear by said deed herewith filed and made part of this answer and petition, and marked Exhibit B-9.

That the said Charles Henry Wilcox, son of said Caroline Wilcox, died about the year 1869, intestate, leaving one child, viz: George H. Wilcox, his only heir-at-law, to whom his interest in said 84,000 acres descended. That said George H. Wilcox, on or about the 28th of November, 1893, by deed bearing date on that day, granted and conveyed to said William M. Risdon, all his right, title, interest and estate, to wit: An undivided one-twentieth in said 84,000 acres; as will appear by said deed herewith filed and made part of this answer and petition, and marked Exhibit B-10. That said William M. Risdon and wife, on or about the 26th of March, 1895, by deed bearing date on that day, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book 5, Page 290, and in the office of the Clerk of the County Court
page 256] of Mingo County in Book 1, Page 328, quit claimed to one John W. Fishburn all his interest and estate in and to certain tracts of land situate in said Logan and Mingo Counties that had been granted to Arthur D. Bright, Trustee, Egbert Mills and Egbert Mills, Trustee, lying inside the lines of said 84,000 acre tract, and held by said Mills and Bright under adverse titles; as will fully appear by said deed.

That the said William M. Risdon departed this life on the 25th of November, 1897, leaving him surviving his widow, Suzan J. Risdon, and leaving a last will bearing date June 2nd, 1884, with a codicil dated November 4th, 1890; which said will was duly admitted to probate by the Surrogate of Burlington County, in the State of New Jersey, on the 10th day of December, 1897. That in and by said will he appointed his wife, Suzan J. Risdon sole executrix, and that after the bequest of some personal property, he devised all the rest, residue and remainder of his estate to his said wife, Suzan J. Risdon, and that letters *testimentary* were issued to said Suzan J. Risdon on the said 10th of December, 1897; as will appear by a duly exemplified copy of said will and probate

herewith filed and made part of this answer and petition, and marked Exhibit B-11.

That afterwards, and on or about the 20th day of December, 1902, the said Suzan J. Risdon, widow and devisee of said William M. Risdon, by deed bearing date on that day, granted and conveyed all her right, title, interest and estate, being an undivided one-twentieth in and to all of said 84,000 acres, excepting the tracts mentioned and described in the deed from said Risdon to said John W. Fishburn above stated; as will fully appear by said deed herewith filed and made part of this answer and petition, and marked Exhibit B-12.

That the said George J. Willard, son of the said the
page 257.] Rev. Joseph Willard, on or about the 21st day of September, 1839, by deed bearing date on that day, granted and conveyed all his right, title, interest and estate, being an undivided four-twentieths in and to said 84,000 acres, to Angus M. L. McVane; as will appear by said deed herewith filed and made part of this answer and petition, and marked Exhibit B-13.

That the said Ellen W. McVane, daughter of the said the Rev. Joseph Willard, and her husband, the said Angus M. L. McVane, on or about the 5th of July, 1859, by deed bearing date on that day, granted and conveyed all her right, title, interest and estate, being an undivided four-twentieths in and to said 84,000 acres, to Angus M. L. McVane, Jr.; as will appear by said deed herewith filed and made part of this answer and petition, and marked Exhibit B-14.

That the said Dr. Augus M. L. McVane died at Metropolis, in the State of Illinois, on July 3rd, 1860, intestate, leaving him surviving three children, viz: Angus M. L. McVane, Jr., William A. McVane; and Marietta E. Ward, widow, his only heirs-at-law, to whom his interest in said 84,000 acres descended.

That afterwards, and on or about the 16th of March, 1895, the said Angus M. L. McVane, and his wife; William A. McVane and his wife, and the said Marietta E. Ward, by deed bearing date on that day, granted and conveyed all their right, title, interest and estate in and to said 84,000 acres to one J. C. Miller; as will ap-

pear by said deed herewith filed and made part of this answer and petition, and marked Exhibit B-15.

That afterwards, and on or about the 10th of February, 1902, the said J. C. Miller and his wife, by deed bearing
page 258.] date on said day, granted and conveyed all their right, title, interest and estate in said 84,000 acres to one C. W. Campbell; as will fully appear by said deed herewith filed and made part of this answer and petition, and marked Exhibit B-16.

That afterwards, and on or about the 7th of October, 1902, the said C. W. Campbell and wife, by deed bearing date on that day, granted and conveyed to said Vernon G. Bruce, all their right, title, interest and estate in said 84,000 acres; as will appear by their deed herewith filed and made part of this answer and petition, and marked Exhibit B-17.

Your petitioner further shows that the said tract of 84,000 acres was entered upon the Land Books of Kanawha County for the years 1801 to 1807 inclusive, and that the taxes upon said tract were paid for the years 1801, 1802 and 1804; that it is not marked delinquent for the other years. Your petitioner is without positive proof that the taxes were paid for those years, but charges that they were. That the Land Book for Kanawha County for the year 1808 is missing.

That the said tract of 84,000 acres was entered upon the Land Books of Cabell County for the years 1809 to 1815 inclusive, and that the taxes were paid thereon for the years 1810, 1813 and 1815, and that the said tract was marked delinquent for the years 1809, 1811, 1812 and 1814.

That the said 84,000 acres were sold for taxes in the year 1815, and the title thereto became vested in the President and Directors of the Literary Fund of said Commonwealth of Virginia.

That your petitioner is without knowledge of the payment of other taxes on said tract, and can not now state what other taxes, if any, have been paid. That the title to said
page 259.] tract, on the 20th of June, 1863, was vested in the President and Directors of the Literary Fund, or in

the State of Virginia, and that on that day the said title became vested in the State of West Virginia.

That since the said title became vested in the President and Directors of the Literary Fund in the year 1815, the State of Virginia has granted by letters patent numerous tracts of land situate within the boundary of said 84,000 acres, and that since the 20th day of June, 1863, the State of West Virginia by other letters patent has granted to various parties numerous tracts of land situate within said bounds, and that in proceedings had under Chapter 105 of the Code of West Virginia, deeds have been made to other parties conveying or purporting to convey other portions of said 48,000 acres, but to all of which tracts so granted and conveyed, or purporting to be conveyed, your petitioner makes no claim whatsoever. But your petitioner believes and charges that there are other tracts of land, part and parcel of said 84,000 acres, which have never been granted or conveyed, or purported so to be by either the State of Virginia or West Virginia since the forfeiture thereof, and the title to which still remains in the State of West Virginia, and which said tracts your petitioner claims the right to redeem; or if he has not that right, then claims the right to receive any excess of the purchase money that shall be realized on the sale of said tracts by the State of West Virginia, over and above the amount of taxes, interest and cost due the State of West Virginia thereon.

Your petitioner says that Commissioner John T. Graham has returned to this Court, in this cause, a report which he completed on the 14th day of June, 1905, and filed after remaining in his office ten days, which mentions and describes cer-
page 260.] tain tracts or parcels of land which he therein denominates as vacant lands, and reports that they are situate in the Morris grant of 500,000 acres, according to the bounds thereof as fixed and determined in a previous report of said Commissioner Graham. Of the several tracts mentioned in said report, the following are within and constitute parts of the said

84,000 acres, and are not vacant in the sense of not having been once granted by the Commonwealth of Virginia, or State of West Virginia, namely:

1163 acres on the north side of Buffalo Creek,
4766 acres between Buffalo Creek and Huff's Creek,
667 acres on the west side of Guyandotte River, between Rock House and Sam Lick Creek,
2048 acres on the east side of Guyandotte River, between Huff's Creek and Elk Creek,
400 acres on the north side of Mate Creek,
125 acres on the north side of Mate Creek,
260 acres on the south side of Mate Creek below the Double Camp Fork,
155 acres on Mate Creek, between Meadow fork and Double Camp Fork,
135 acres on the Straight fork of Mate Creek,
175 acre on the south side of main Pigeon Creek, below Slick Rock branch,
112 acres on the south side of main Pigeon Creek, above Slick Rock branch,
135 acres on the south side of Pigeon Creek, above Big Muncey Creek,
957 acres between Beech Creek, Ben Creek and the head of Alum Creek,
1604 acres on the west side of Guyandotte River, between the same and Horsepen fork of Gilbert.

[page 261.] Your petitioner says that said parcels of land last above mentioned are not situate within the Robert Morris tract mentioned in the plaintiff bills, but lie wholly without the bounds of said survey and within the said John Green 84,000 acre survey. The said King, therefore, has no right to redeem the same, or any part thereof, or to the excess of purchase money over and above the taxes, interest and costs for which they may be sold. On the contrary, your petitioner says that the right of redemption is with him, and he prays to be allowed to redeem such parts of said

parcels of land above mentioned, the title to which still remains in the State, and which may not be claimed under any junior grant by patent or deed, or claimed by any person under Section 3, Article 13, of the Constitution; or under any deed made under Chapter 105 of the Code, conveying or purporting to convey the same. And your petitioner is informed, and so charges, that some portions of said tracts are so claimed and held; but as to such portions not so claimed and held, he asks to be allowed to redeem or to receive the excess of the purchase money for which they may be sold, provided this Court has jurisdiction and authority to either sell the said parcels or to permit them to be redeemed in this cause, notwithstanding the institution and pendency of the suit next below mentioned.

Petitioner avers that on the 15th day of June, 1893, the State of West Viriginia, under and in accordance with the provisions of Chapter 105 of the Code, as amended by the acts of the Legislature of 1893, instituted a suit in the Circuit Court of Logan County in said State against the unknown heirs of John Green, John V. LeMoyne, Jesse R. Irwin, Alvin Irwin, Harris Hoyt, Marie E. Hoyt, C. F. Thomas, Summer F. Dinham, Wm. C. Jones, John T. Wills, Nathaniel R. Benson and all unknown claimants of said tract of 84,000 acres so granted to John Green, averring that the said tract of 84,000 acres so as aforesaid granted to the said John Green, had been forfeited to and vested in, the Commonwealth of Virginia, or in the President and directors of the Lit-
page 262.] erary Fund and that the same was then vested by forfeiture in the State of West Virginia; that the same had been wholly omitted from the land books of the proper county or counties where the said 84,000 acres are situated for more than five successive years, after the year 1869, and praying for the sale of such parts thereof to which the State still had title and which had not been redeemed, released, transferred or otherwise disposed of, either by the Commonwealth of Virginia or by the State of West Virginia.

John V. LeMoyne, through whom the said Henry C. King claims said Morris grant, was named in and is a defendant to said bill

and party thereto, and filed his petition and answer therein averring his ownership of the Morris grant, and that the John Green grant of 84,000 acres was a part of the Morris grant and was junior, and in consequence was void as against the Morris grant, and asked to be allowed to redeem said 84,000 acres as a part of the said Morris grant. Afterwards the said Henry C. King also appeared in the said cause and filed his petition and answer therein claiming title to the said Morris grant through the said LeMoyne, and asked to be allowed to redeem the same as part of the Morris grant.

Angus M. L. McBane, W. A. McBane and Ruth E. Ward also appeared in said cause and filed their petition and answer therein, claiming that they owned certain undivided interests or shares in the said John Green 84,000 acres, and denying that said 84,000 acres was situate within the said Morris grant, and denying the right and title set up by the said LeMoyne and the said King, and praying to be allowed to redeem said 84,000 acres or such portion thereof as to which the State still had title. The State of West Virginia replied generally to each of said petitions and answers, and thereupon the said Circuit Court of Logan County pronounced and entere a a decree referring said cause to a Commis-
page 263.] sioner in Chancery, as required by Chapter 105 of the Code. Afterwards and before the complete execution of said decree of reference said cause was transferred to the Circuit Court of Kanawha County, where it was docketed, and after having been directed to be heard and proceeded with, with certain other causes prosecuted in the name of the State of West Virginia against certain other lands alleged to be forfeited and liable to sale for the benefit of the school fund, there was entered a decree of reference to Commissioner Henry O. Middleton, under which decree of reference the parties therein, to-wit: The State of West Virginia and the said Henry C. King, took before the aforesaid Commissioner the testimony of many witnesses, and before the complete execution of said reference and the making and filing of the report in said cause and in the other causes with which it was directed to be heard, the said cause was transferred to the Circuit Court of Marion County, where it is now pending and

undetermined.

Petitioner also avers that prior to the institution of this suit in the Circuit Court of Wyoming County, on the 7th of May, 1894, to-wit: On the 15th day of June, 1893, the State of West Virginia instituted a suit in the Circuit Court of Logan County, West Virginia against the said John V. LeMoyne and others, averring that the Morris grant of 500,000 acres of land was forfeited to the State of West Virginia for non-entry, non-assessment and non-payment of taxes thereon in the counties where the same was situate, for a period of five successive years after the year 1869, and mentioned and described certain portions thereof, the title to which the State averred was vested in her, and asked the sale of such portions for the benefit of the school fund; and averred that there were other portions of said grant, the title to which still remained in the state, and which, she prayed, might be ascertained and decreed to be sold. The said John V. LeMoyne, and

page 264.] afterwards the said Henry C. King, appeared in said cause and answered said bill therein, claiming title to said Morris grant, denying the forfeiture thereof, but averring a disposition to pay any taxes that might be due and unpaid thereon. The State replied generally to said answer and the said cause was referred to a Commissioner in Chancery, in accordance with the provisions of Chapter 105 of the Code. Afterwards and before said decree of reference was executed, by the making and filing of the report, as directed the said cause was transferred to the Circuit Court of Kanawha County and was therein docketed, and the said cause was directed to be heard with the cause against the said John Green 84,000 acres and certain other similar causes. The Morris grant mentioned and described in the suit so instituted in the Circuit Court of Logan County is the same tract which is mentioned and described in this suit, instituted in the Circuit Court of Wyoming County. The said decree of reference made by the Circuit Court of Kanawha County has not been fully executed, and no report has been made and filed thereunder, but the State of West Virginia and the said Henry C. King have taken the testi-

mony of numerous witnesses therein concerning the matters of inquiry under said decree of reference. Said cause has been transferred to this Court, and remains therein pending and undetermined Petitioner is advised that by institution of the said causes in the Circuit Court of Logan County, the last named Court acquired jurisdiction, power and authority to hear, try and determine all questions arising therein, and to finally dispose of said tracts of land, and the right of this Court to hear, try and determine said questions and dispose finally of said tracts of land is by virtue of said suits and not by virtue of this suit instituted in the Circuit Court of Wyoming County at a later date.

In verification of the foregoing allegation in respect to the two suits above mentioned, instituted in the Circuit Court
page 265.] of Logan County, petitioner refers to the record of said causes now remaining on file in this Court.

Petitioner therefore prays that this Court will dismiss this suit as to all the land embraced within the bounds of the said grant of 84,000 acres to John Green, because of the exclusive jurisdiction of the Circuit Court of Logan County acquired over said 84,000 acres of land by virtue of the suit instituted therein, prior to the institution of this suit in the Circuit Court of Wyoming County; but if this suit be not so dismissed as above prayed, then that it be ascertained and determined that said John Green grant of 84,000 acres is not within the bounds of the said Morris grant of 500,000 acres.

If this Court should for any reason determine that it has jurisdiction of and dominion over the John Green 84,000 acres by virtue of this suit, then and in that event your petitioner prays that he be permitted to redeem the portions thereof as the title to which still remains in the State, and not redeemed, released, transferred or otherwise disposed of.

VERNON G. BRUCE.
By Counsel.

EDWARD C. LYON
J. A. HEPPEND (*Solic.*
C. W. CAMPBELL

page 266.] DEMURRER AND ANSWER OF KING TO THE PETITION OF VERNON G. BRUCE.
(Filed Oct. 3rd 1905.)

IN THE CIRCUIT COURT OF WEST VIRGINIA,
FOR THE COUNTY OF MARION.

State of West Virginia
vs. A *In Chancery.*
Henry C. King, et als.

The demurrer and answer of Henry C. King to the Petition of Vernon G. Bruce filed herein on the ————day of July, 1905.

To the Honorable John W. Mason, Judge of said Court:

Now comes the defendant, Henry C. King, and demurs to the said petition of said Vernon G. Bruce, for that the said petitioner states no facts that entitle said petitioner to any relief; and not waiving said demurrer, but insisting upon the same, for answer to said petition, or to so much thereof as he is advised it is material for him to answer says:

That this defendant admits that on about the 15th day of December, 1796, the Commonwealth of Virginia issued to one John Green letters patent purporting to grant to said Green 84,000 acres of land then supposed to lie in the County of Kanawha; but this defendant denies that any title to or interest in said land passed by said letters patent, because no title thereto was then vested in said Commonwealth, because the land embraced in said patent had previously been granted to Robert Morris by letters patent dated June 23rd, 1795.

That this defendant has no knowledge nor such information as to enable him to admit that said John Green died unmarried and intestate or to say who were his heirs-at-law and therefore he denies that Sarah Green and Anna Wharton were
page 267.] his heirs-at-law or that either of them was an heir-at-law of said John Green. And this defendant has no

knowledge whether any of the other persons mentioned in said petition as having had some claim of title under said John Green mediately or immediately, directly or remotely, had any such claim; or whether any of the said persons who are alleged therein to have died testate or intestate as therein alleged did so die; or whether they left devisees or heirs at law as therein alleged; or whether any of the persons therein mentioned as having executed certain alleged deeds or other conveyances or writings did in fact execute such writings, and therefore this defendant denies that any of said persons died leaving heirs at law or devisees as in said petition alleged, or that any such deeds or pretended deeds or writings were in fact executed as are alleged by said petition to have been executed purporting to convey some part of or interest in said 84,000 acre tract and demands strict proof of each and every of said allegations, if said allegations be found by the court to be material. But this defendant avers that none of said persons ever acquired or now has any right, title or interest to or in any land embraced in the boundaries of said 84,000 acre tract.

That this defendant denies that any taxes were paid upon said pretended 84,000 acre grant for the years, 1801, 1802, and 1804 or for either of said years or for any other years, and avers that no person claiming under said pretended grant ever paid any taxes thereon from the date of said grant to the present moment.

That this defendant admits that said pretended 84,000 acre grant was sold to the Commonwealth of Virginia in 1815 for unpaid taxes, and avers that the same never was redeemed or released, and that thereby the claim of title under said pretended

page 268.] grant became extinguished and lost and has never been revived. And this defendant therefore denies that the title to said grant was vested in the President and Directors of the Literary Fund or in said Commonwealth of Virginia, on the 20th day of June, 1863, because said pretended title had ceased to exist long before that time, and the land embraced in or covered by said patent was then owend not by said Commonwealth but

by the predecessor in title of this defendant under said Robert Morris grant.

That this defendant denies that there are parts of said 84,000 acre tract that the the said petitioner, Bruce, has the right to redeem or in which, or in the proceeds of which he has any right, title or interest whatever.

That this defendant admits that Commissioner John T. Graham returned to this court on the 14th day of June, 1905, a report mentioning the certain parcels of land set out in said petition as parcels of said Robert Morris 500,000 acre grant and this defendant avers that the said parcels are parts of said 500,000 acre grant, and denies that said parcels were or that any of them was ever granted to said John Green, or that said Bruce has any right to redeem any of said parcels.

That this defendant admits that the State of West Virginia on or about the 15th day of June, 1893, brought a suit in the Circuit Court of Logan County, West Virginia, under the provisions of Chapter 105 of the Code, against the unknown heirs of John Green, John V. LeMoyne, who is this defendant's grantor, sundry other named persons and all unknown claimants of said socalled 84,000 acres, for the purpose of selling the same as having been forfeited to the Commonwealth of Virginia, and that said LeMoyne filed an answer therein in which he alleged that the said 84,000 acre grant was junior and inferior to said 500,000 acre grant and was embraced therein; that subsequently this defendant
page 269.] filed his petition and answer therein claiming title to said Morris grant and to the said 84,000 acres as part thereof; and that Angus M. L. McBane, W. A. McBane and Ruth E. Ward also appeared and filed in said suit their petition and answer claiming certain interests in said 84,000 acres, and that said cause was afterwards removed to the Circuit Court of Kanawha County, where a reference was decreed, and that afterwards said cause was removed to this court. But this defendant says no report has ever been made in said cause nor any matter

adjudicated therein, and no proof offered therein by any one claiming under said John Green, in support of his or her claim thereunder, and the said McBanes have abandoned their claims and pretensions for ten years, and the other claimants or pretended claimants under said John Green have never appeared therein.

That at the same time that the suit last mentioned was brought the said State brought another suit in the same court against the same John V. LeMoyne, and the unknown heirs of the same John Green, the purpose of which was to sell the said Robert Morris 500,000 acre grant as forfeited to the State of West Virginia for non-assessment of taxes thereon since 1883, alleging that the said 84,000 acre tract overlapped upon the said Morris grant.

That this defendant is informed and believes that said Vernon G. Bruce is not a claimant of said 84,000 acre tract, or parts thereof, in his own exclusive right, but is a trustee for one Luther Kountze and for Egbert Mills, ArthurD. Bright and others whose socalled joint and several answer is filed herein, or for some of them, and that said persons are the real claimants in place of or with said Bruce, and that J. C. Miller, who is mentioned in said petition as one of the persons under whom said Bruce claims, was trustee for himself and J. B. Ellison, an attorney at law of
page 270.] Logan County, who in 1893-4 claimed about one-half of said 84,000 acre grant; and that the said Kountze and his associates who then held the claim of title to the property claimed by said Mills and others in their socalled answer, and who are commonly known as "the Kountzes" or the "Kountze syndicate," were the claimants in 1893-4 of the other half of said grant, having since acquired such claim as was held by said Miller et als.

That on the 7th day of May, 1894, the said State of West Virginia instituted this suit in the Circuit Court of Wyoming County against this defendant and others, for the purpose of selling said 500,000 acre grant as forfeited to said State, and said suit becoming known to some of the persons aforesaid who then claimed title to

or right of redemption of said 84,000 acre tract and under whom said Bruce now claims, procured a transcript of the record of said suit in Logan County against said John V. LeMoyne and the unknown heirs of John Green and all unknown claimants of said 84,000 acre tract, and also the transcript of record of said suit against the unknown heirs of John Green and the unknown claimants of said 84,000 acre tract, and against said John V. LeMoyne, one for the sale of said 84,000 acres and the other of said 500,000 acres, and presented said records to said Circuit Court of Wyoming County and filed the same in this cause, and objected to the jurisdiction of said Circuit Court of Wyoming County over the subject matter of this suit, and endeavored to procure a dismissal of the same. But the said State of West Virginia insisted upon prosecuting this cause, and said Circuit Court, although advised of all matters set out in the transcripts of said two causes instituted in the Circuit Court of Logan County as aforesaid, refused to

page 271.] surrender jurisdiction of said land and proceeded to a final hearing of said cause, and on the 10th day of September, 1897, entered herein its decree whereby it fixed and determined the boundaries of the said Morris 500,000 acre grant, adjudged that this defendant had the right superior to all other claimants to redeem the same, recited the payment by this defendant of a certain sum of money fixed by the court as necessary to effect a redemption of said land, and decreed and declared the said land to be by this defendant fully redeemed, and decreed that no sale of the same or any part thereof should be had by or on behalf of said State of West Virginia.

That the boundaries of said Morris grant ascertained and established by said decree embrace and include all the parcels of land set out in the report of Commissioner John T. Graham mentioned in the petition of said Bruce and to which he sets up by his said petition some claim.

That subsequently an appeal was taken from said decree to the Supreme Court of Appeals of West Virginia, and upon the hearing thereof said decree was affirmed in all respects, except so far as it

fixed the amount of taxes, interest and cost necessary to a proper redemption of said land and so far as it decreed a redemption of said land by the payment of said sum, and said decree now stands otherwise unreversed and is conclusive that this defendant has the right to redeem said land or such part thereof as he may wish to redeem, and that no other claimant has such right, and that said Morris grant is located, described and bounded as set forth in said decree, and that the State of West Virginia shall not sell any part of said grant as so bounded and described, upon which this defendant shall pay the taxes, interest and cost properly chargeable thereon since the year 1883.

page 272.] That pursuant to permission given this defendant by the Supreme Court of Appeals in its mandate to the said Circuit Court this defendant has filed in this cause an amended petition, describing the portions of said Morris grant that this defendant desires to redeem, and offering to pay the taxes and proper charges thereon, which said portions include all the parcels mentioned in said commissioner's report and referred to in the petition of said Bruce, and this defendant still desires and claims the right to redeem said lands.

That not only was the pendency of said suit of the State of West Virginia for the purpose of selling said 84,000 acre tract and the right of the State in the premises brought to the attention of said Circuit Court of Wyoming County, and the record of said proceeding filed herein by or on behalf of persons under whom said Bruce now claims, but after the rendition and entry of said decree of September 30th, 1897, the transcript of the record of this cause, including the transcript of the record of said suit last mentioned, was procured and paid for by the parties claiming said 84,000 acre tract, or some of them, and under or for whom the said Bruce now claims, and by them or some of them and their counsel the appeal aforesaid to the Supreme Court of Appeals was sued out and prosecuted for the benefit and at the expense of the said claimants of said pretended 84,000 acre grant, although conducted in and under the name of said State of West Virginia as a nominal

appellant, and they have derived advantage from the partial reversal of said decree; and this defendant is advised and contends that the said decree in all matters wherein the same was affirmed is a binding and conclusive adjucation against the

page 273.] said Bruce, and that he is estopped thereby from claiming that the boundaries of the said Morris grant are not located as in said decree they are decreed to be, and from denying or contesting the right of this defendant to the parcels of land mentioned in said commissioner's report, and from setting up any claim thereto.

Wherefore this defendant prays that the petition of said Bruce be dismissed.

HENRY C. KING,
By Counsel.

MAYNARD F. STILES,
Solicitor.

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page 274.] At a Circuit court held in and for the county of Cabell, at the court-house thereof on the 5th day of July, 1901, the following decree was entered:

DECREE OF REFERENCE.

State of West Virginia
vs.) *In Chancery.*
Henry C. King & Others

This day this cause came on to be further heard upon the papers, orders and decrees formerly had and entered herein, as well as upon the original bills of the plaintiff filed in this cause and it appearing that the process on said amended bill had been regularly executed—Upon the defendants Eli White, Jackson Vance, Floyd Vance, George Steele, Thomas Baisden, John R. Mullens, Floyd Stollings, L. D. Chambers, Robert

Morgan, Veline Williams, Thomas Steele, G. R. Browning, Calvin Curry, Lewis Curry, Cora Belle Vance, Maling E. Vance, Alsera Vance, Mary Ann Smith, Zattoo E. Gore, Green Gore, George Skeggs, Heanie Skeggs, W. W. Elkins, Anderson Browning, Bilton Perry, Lena Perry, Ed Perry, Eli Perry, L. D. Hinchman, William Claypool, W. F. Farley, Eli Gore, C. H. McDonald, J. E. Peck, Sr., F. M. White, C. H. Gore, T. F. Price, M. B. Mullins, Simpson Ellis, G. W. Morgan, Vicie Nighbert, J. B. Wilkinson, Milton Cartwright, Moses Mounts, Minnie Holland, Ralph Steele, Jr., Beatrice Hale, Jane Dingess, Emily Lawson, S. S. Altizer, Flora Hale, Ella Sidebottom, Laura Hale, Jonas H. Vance, L. H. Thompson, J. T. Vance, G. R. Buskirk, Bruce McDonald, W. E. Justice, Preston Perry, Walter Scaggs, J. W. Hinchman, G. R. Hinchman, Minerva Perry, Warren Perry, Mollie Doss, Cecil Perry, G. R. McDonald, W. W. McDonald, Millard McDonald, Jonas E. McDonald, H. C. Avis, Maggie Vance, Joseph Browning, J. E. Toller, Milton Browning, Sr., Eli Blankenship, Levi Browning, Stella M. Christian, Everett R. Christian, Alec. Hatfield, Lottie Mounts, Leonard Mounts, Don Mounts, Mordacai Mounts,

page 275.] Allen Mounts, Abba Mounts, Josie Mounts, Sarah Mounts, Robert Wilson, F. M. Harless, Henry Blankenship John Davis, Shennon Davis, L. B. Riffe, A. J. Ellis, J. H. Blankenship, George Cline, Pleasant Lester, Lewis Lester, M. J. Morgan, Michael Lochart, William Roberts, Andrew Kennedy, Mills Robert, Riley Roberts, Jane Fuller, Simon P. Bailey, Jackson Bailey, Kennas Roberts, William Bailey, Amanda Bailey, Annison Cline, Cornelius Roberts, Archibald Bailey, Samuel Justice, Dorsey Cline, John Bramman, H. L. Low, John F. Stacey, Nancy Stacey, A. J. Stacey, Shade Stacey, James P. Lester, Andrew Allen, Moses Blankenship, Lydia Bailey, J. F. Bailey, C. R. Allison, James M. Cline, Peter Cline, William Cline, Moses C. Cline, Anthony Cline, Harrison Cline, Thomas Colden, Riley Lester, Mary A. Lester, Albert Hurley, W. A. Johnston, Clara

Mounts, Victoria Music, Della Music, Cummings Music, Erastus Music, Huling Music, Eveline Perry, B. H. White, Alec Stafford, J. W. Stafford, Leander Ellis, Clarissa Christian, Stelle M. Christian, Marth M. Lester, Chloe L. Ferrell, Augustus Ferrell, Chloe Buckhannan, J. H. Trent, Martha W. Buckhannan, David Carter, J. S. P. Stafford, Scott Ellis, L. B. Godfrey, Preston Walker, Lewis, Riffe, L. D. Riffe, Jane Lester, A. J. Ellis, Johnson Trent, William Lochart, W. R. Yeager, James Cline, William Bailey, Thomas C. Blankenship, Cloyd Blankenship, James Bailey, Andrew Bailey, Richard Lockhard, William McGee, Preston Bailey, Elizabeth Cline, T. A. Bettin, Cloyd Bailey, Conley Blankenship, John Lambert, Peter Cline, W. H. Justice, G. W. Cline, Thomas Lester, Harvey Bailey, Mitchell Hatfield, King Hiram Blankenship, James Hatfield, A. M. Toller, J. C. B. Toller, A. H. Toller, J. M. Toller, Laura Toller, Nettie Toller, Sarah D. Hatfield, Nancy Rutherford, Enoch Gibson, Tennesee, Gibson, Nicholas Gibson, Halsey Gibson, Sarah Gibson, Nancy Gibson, Levi Gibson, Lydia Brown, Nancy Brown, Henry Lee Ellis, Albery Kennedy, W. J. Kennedy, L. B. Sipple, Joseph Simpkins, Mary Toller, Robert Cox, Floyd Hatfield, Ephraim Hatfield, Sarah Browning, Lewis

page 276.] Cary, Thomas McNeely, Sarah N. Nelson, Martha Basden, Anderson Cary, Alexander Varney, Mary Music, F. M. Kennedy, J. C. White, E. H. Simpkins, J. C. Williamson, Jesse R. Erwin, W. L. Taylor, The Panther Lumber Company, a corporation, J. E. Dickerson, William E. Chilton, S. P. Kelley, G. F. Miller, J. L. Caldwell, Thomas H. Harvey, Annie Robinson, George Robertson, Lily Robertson, Mary Hayslip, Etta Miles, J. A. Peck, C. W. Campbell, C. W. Campbell, Trustee, J. C. Miller, The Guyan Mercantile Company, Z. T. Vinson, Receiver. And the order of publication having been regularly executed by being duly published and posted as required by law as to the non resident and unknown defendants, Henry C. King, Robert E. Randall, trustee, John R. Reed, trustee, Henry A. McCarthy,

trustee, Hamilton B. Bradshaw, John Lemoyne, trustee, William H. Gardner, trustee, John P. T. Ingraham, trustee, David W. Armstrong, and George O. Collins, Ben. E. Greene, Jas. Maybrick, Florence E. Maybrick, Caroline Vanroques, Adolph Vanroques, Harris T. Groom, Virginia Erwin, Ethel Erwin, Clars Erwin, Alvin Erwin, Harris Hoyt, Macie E. Hoyt, C. F. Thomas, S. F. Dunham, William C. Jones, John T. Willis, Nathaniel R. R. Benson, William M. Risdon, Emma I. Pomeroy, Amos C. Hill, W. H. Stoddard, Alexander McClintock, John McClintock, C. L. Talbot, D. F. Frazee, trustee, J. S. Hanchell, Jr., trustee, G. W. Millard, Wellington D. Amerson, trustee, J. C. Williamson, F. M. Trent, R. T. W. Duke, Jr., R. L. Joyce, Stewart Wood, Richard Torpin, Jr., John Lambert, Jr., George Wharton Perrer, trustee, J. D. Sergeant, Richard Torpin, Jr. William Perrer, Thomas H. Graham, Howard S. Graham, The Unknown Heirs of Thomas Graham, deceased, L. M. Hall, J. K. Newall, Charles L. Tracy, A. Betz, A. W. Watson, J. B. Hutchinson, R. M. Lawson, R. B. Lawson, Rexalina Cooper, Bettie Leahman, Viola C. Younger, W. T. Younger, Frank Camron, Viola G. Wiley, Byron L. Wiley, G. W. Becktel, M. O. Dotson, G. W. Doke, trustee, Jane Fuller, Albert Husley, W. P. Payne, Saulsbury Justice, F. S. Litz, Edwin Myers, Granville Petry, B. J. Sayer, James C. White, E. B. Wilson, O. M. Vickers, and A. E. Humphrey.

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And also upon the separate answer of Staurt Wood, with general replication thereto; and the joint and several answer of Staurt Wood, Thomas H. Harvey, George F. Miller, S. S. Altizer and Vicie Nighbert, with general replication thereto; and also the joint and several answer of C. W. Campbell, in his own right and as trustee, J. L. Caldwell, John Q. Dickinson, Thomas H. Harvey, George F. Miller, S. S. Altizer and Vicie Nighbert, with general replication thereto; also the joint and several answer of Egbert Mills, Egbert Mills, trustee William H. Lawson, William H. Lawson, trustee, Arthur D. Bright, Arthur D. Bright, trustee and William Kronenwett, with general replication thereto; also upon

the joint answer of Thomas H. Harvey, George F. Miller, S. S. Altizer and Vicie Nighbert, with general replication thereto; also upon the separate answer of the Forest Coal Company, with general replication thereto; and the answer of K. H. Blankenship, William McGee, and R. C. Ellison, with general replication thereto; also upon the joint and separate answer of A. W. Watson, J. P. Hutchinson, S. S Altizer, George F. Miller, Thomas H. Harvey, and Vicie Nighbert with general replication thereto; also upon the joint and separate answer of W. F. Younger, Viola C. Younger, S. S. Altizer George F. Miller, Thomas H. Harvey, Vicie Neighbert, and Frank Cameron Wiley, with general replication thereto and also upon the separate answers of James L. Cline and Mary Cline, the joint answer of James Hatfield, M. A. Hatfield and Moses Blankenship the joint answer of K. H. Blankenship, Wm. McGee and R. C. Allison with general replication to each of said answers.

And it appearing that the defendant Nicolas Gibson, Halsey Gibson, Levi Gibson, Clara Mounts, Viola G. Wiley, Byron L. Wiley, Ella Sidebottom, Flora Hale, Laura Hale, Beatrice Hale,
Lonnie Mounts, Leander Mounts, Don Mounts,
page 278.] Mordecai Mounts, Alla Mounts, and Alta Mounts,
Josey Mounts, Cora V. Steele, S. Columbia Steele, Cecil Perry, Lon Perry, and Preston Perry are infants under the age of 21 years, on motion of the plaintiff, H. C. Ragland, is appointed guardian ad litem to defend the interest of said infants, and thereupon the said H. C. Ragland as such guardian ad litem tendered and filed the answer of said infants, and the plaintiff replied generally thereto, and this cause being also heard upon said answer, with replication and the original petition and answer of the defendant Henry C. King, with general replication thereto, and upon the amended petition filed in this court at the last term by the said Henry C. King, with general replication thereto; on consideration of all of which the Court doth adjudge, order and decree that this cause be and the same

is hereby referred to John T. Graham one of the Commissioners of this court, with instructions to inquire and report upon the following matters and things to-wit:

1st.—The quantity, description and location of the portions of the Morris 500,000 acre grant and other land in the bills, answers, petitions and proceedings mentioned and described, to which the title now remains in the State, and which is subject to sale for the benefit of the School Fund.

2nd.—The amount of taxes and interest due and unpaid upon the same, giving to each county and district therein its proportion of such taxes, according to quantity and value of the land situated in each, and according to the rate of taxation for the years for which no taxes were paid upon said lands.

3rd.—The name or names of the former owners of said lands, as well as the persons in whose names the same were forfeited and for what cause said land were forfeited, and the circumstances relating thereto, and the names of the present owners or claimants thereof.

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4th.—What portion, if any, of said lands located in this State, are now held by valid titles by any of the defendants or other persons under grants, or color of title or under sales and conveyances, made in any proceedings to sell school lands, or under the provisions of Section 3, Article 13, of the Constitution of this State.

5th.—The portion or portions, if any, of said lands which may have been heretofore sold in any proceeding to sell school lands and whether the taxes upon such portions, if any, there be, have been regularly paid, since the execution of the deed under such sale.

And on motion of the defendants other than Henry C. King answering at this time and others who may hereafter appear herein.

Said Commissioner shall also inquire and *and* report upon the following matters and things, to-wit:

FIRST: Whether the Robert Morris grant, described in the

bill, was forfeited prior to the 15th day of March, 1838, to the Commonwealth of Virginia, or to the President and Directors of the Literary fund for any cause or in any manner, or purchased by said Commonwealth at a sale thereof for the taxes assessed thereon; and if so, for what year, or years, and whether said land was ever redeemed or released from such forfeiture.

SECOND: Whether James Swan died seized or posessed of said land, or of any interest, part or share thereof, by title, legal or equitable; if not what disposition had he made of said land.

THIRD: If he died seized of said land, or any part thereof, was said land, or said part, vested in John Peter Dumas, trustee, under and by virtue of the act of the General Assembly of Virginia, passed on the 15th day of March, 1838; and, if so, vested, what disposition did said trustee make of the same, or any part thereof. And particularly, what became of the title to 300,000 acres of said land alleged to have been conveyed by said Dumas, trustee, to John Joseph Marie Schmidt Thornfield.

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FOURTH: What title, if any, vested in Anthony Lawson under the alleged deed purporting to have been executed by one James M. Laidley, styled himself Special Commissioner, to said Lawson, bearing date the 10th day of May, 1856, and whether that deed passed any right or title to the 300,000 acres of said grant previously conveyed to said Thornfeld by said Dumas, trustee, by deed bearing date the 29th day of September, 1846.

FIFTH: Whether the said tract, called the Morris grant, was escheated to the Commonwealth of Virginia, or whether any part or portion thereof was so escheated; and, if so, when.

SIXTH: What taxes were due and unpaid on that portion of the said Morris grant, which is embraced in the State of West Virginia, at the time of the alleged redemption thereof by Robert E. Randall, trustee, in April, 1883; and particularly the said Robert E. Randall in said redemption, paid any taxes on

those portions of said land wheich were then claimed adversely to him under deeds or patent, or other colors of title, and on what proportion of the said land, so situate in West Virginia, was the $8,000.00 paid by said Randall at that time.

SEVENTH: Whether any part, interest or share, and if so, what, of that portion of said land, so lying within said State, is, subject to the redemption; if so, what part, interest or share and who has the right of redemption, and what is the quantity, location and description of such parts, and in what *taxe* and interest are now due and unpaid on each part, and in what county and district payable.

EIGHTH: If James Swan parted with all or any part of his title to said land, prior to his death, what became of such title and whether James Swan so parted with said land or not, was the same then or afterwards forfeited either to the State of Virginia or to the State of West Virginia, or purchased by either at sales thereof made for taxes charged or chargeable thereon; if so, when forfeited and for what cause, and who has the right to redeem the same and what portions, how located and described are subject to redemption, and the amount of taxes and interest due and unpaid on each portion, and the name of the county and district where situate.

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NINTH: And it appearing to the court from the answers hereinbefore mentioned, that the defendants, so answering, deny that the lands claimed by them are inside and parts of the said Morris grant, and for that reason, are not subject to sale by the State, or redemption by said King or other person; therefore, said Commissioner shall inquire, ascertain and report the true and correct location of the said Morris grant, and whether said lands, so claimed by said defendants, or any of them or the lands of any defendants who may appear herein, are within said survey.

But the costs attending the foregoing nine requirement, asked for the defendants, shall not be paid by the State.

The said Commissioner shall also report upon any other matter or thing he may deem pertinent, or that he may be required, in writing, to investigate and report by any party to this suit, or by any person or persons who may hereafter become a party to such suit.

Said Commissioner is authorized and directed to sit either in this County, or at Logan, Mingo, Wyoming or McDowell County, where said lands are situate, for the purpose of taking such proof as may be offered by any party to this cause.

Said Commissioner is hereby directed to proceed with reasonable diligence in the discharge of his duties under this decree and is directed to make and file his report as to any one or more of the said tracts or parts thereof mentioned herein at any time without waiting to complete his report as to the whole of said tracts.

The said commissioner before proceeding to dis-
page 282.] charge his duty under this decree shall give notice to all the parties to this suit and to all unknown owners and claimants of the lands, or any part of them, mentioned herein, by publication in the Huntington Advertiser, of Cabell County, West Virginia, The Logan County Banner, of Logan County, West Virginia, The Southern West Virginian of Mingo County, West Virginia, The McDowell Record of McDowell County, West Virginia, and some newspaper published in Wyoming County West Virginia, if any *here* be, once each week for four successive weeks, before the day fixed for his sittings hereunder, and by posting a copy of such notice at the front door of the Count House of this Court and each of the above named Counties for a like time, setting out therein the time and place of his sittings hereunder.

Said Commissioner is authorized and directed to adjourn his further sittings to any time and place in the Counties aforesaid, without any additional notice.

It is further ordered, adjudged and decreed that if any of the defendants, who have not at this time filed answers, or any

persons not parties, but interested in any land involved in this cause, shall have the privilege of appearing before said Commissioner and present his answer or petition, setting up the title to the land claimed by him, and to take such proofs thereon as he may deem proper.

Said Commissioner is directed to report upon all such matters as if said petition or answer had been filed before the entering of this decree.

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page 283.] ORDER OF SURVEY.

State of West Virginia.

At a Circuit Court held in and for the county of Cabell at the court-house thereof, on the 5th day of August, 1902, the following order was entered:

State of West Virginia
vs.
Henry C. King et als.

On motion of defendant King by his counsel, C. W. Campbell, Esq., of counsel for "contesting defendants" objecting, it is ordered that the order of survey entered herein on the 14th day of July last be amended and enlarged by adding thereto as a surveyor herein, W. C. Reddy, who is hereby appointed one of the surveyors herein under the conditions and directions of the order aforesaid.

And it is further ordered that the surveyors and each of them before executing said order of survey take oath to execute the same justly and accordingly to the best of their several abilities.

page 284.] ORDER *OVERULING* MOTION OF SUNDRY DEFENDANTS TO STRIKE OUT ANSWER OF KING.

State of West Virginia.

At a Circuit Court held in and for the county of Cabell, at the Court-house thereof, on the 16th day of December, 1902, the following order was entered:

State of West Virginia
vs.) *Chancery.*
Henry C. King et als.

The defendant Henry C. King, having heretofore filed answer to certain of the so called answers of sundry other defendants to the fifth amended and supplemental bill of the State of West Virginia, to the filing of which answer of the said King the said other defendants objected and the said defendants having by their counsel moved to strike out the said answer of said King, and particularly those parts of said answer relating to the conduct of said defendants and their connection with this case prior to becoming parties by name under said fifth amended and supplemental bill, and the said motion having heretofore, at the present term, been argued by counsl for the respective parties and having been by the Court taken under advisment and consideration and the Court being now fully advised doth order that said motions and objections be and the same are hereby overruled, the Court reserving until the hearing the questions arising on said pleadings and the proof thereon.

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REPORT OF COMMISSIONER GRAHAM ON LOCATION AND BOUNDARY OF 503,000 ACRE GRANT.

IN THE CIRCUIT COURT OF WEST VIRGINIA FOR THE COUNTY OF CABELL

State of West Virginia

vs.

Henry C. King, et als.

To the Honorable E. S. Doolittle, Judge of said Court.

The undersigned J. T. Graham Commissioner in Chancery, of said court, to whom the above styled cause was at the July term 1901, of said court referred for the purpose of reporting upon the requirements in said decree of reference contained, respectfully submits the following:

That owing to the rule in prohibition issued by the Supreme Court of Appeals in this cause and also a proceeding had to remove this cause to the Federal Court subsequent to the entering of the degree of reference, your Commissioner was delayed in commencing his proceedings until the 22nd day of April, 1902.—which date he fixed and designated as the time when he would commence his sittings at his office in the City of Huntington, *Cabel* County, West Virginia, to execute the requirements of the said decree.

That before commencing his sittings he caused notice thereof as required by the decree to be published once a week for four successive weeks immediately prior to the said 22nd. day of April 1902, in the Huntington Advertiser, of *Cabel* County; The Logan County Banner of Logan County; The Southern West Virginian, of Mingo County; The McDowell Recorder of McDowell county, and the Wyoming Herald, a news paper of general circulation published in Wyoming County. And also caused a copy of the said notice as so published to be posted for a like period of time at the

front door of the Court House of Cabell County, Logan County, Mingo County, McDowell County and Wyoming County.

Your Commissioner returns with this report a copy
page 286.] of the notice as the same was published in each foregoing news paper with the certificate of the editor thereof attached, showing the publication for the time required in each respective paper and with the affidavit annexed showing the same to have been posted as herein above set out in the manner required by the decree of reference.

Having fully complied with the decree of reference relating to the notice, publication and posting as herein set out, your Commissioner, at the time and place in said notice specified, commenced his proceedings and continued the same from day to day and time to time until the 11th. day of February 1903, when the taking of the testimony on the matter contained in this report was closed.

The most important matter in controversy to be determined at the out-set of your Commissioners investigation is the question of the location of the Robert Morris Grant, as it is contended by a great number of defendants, that the lands they claim are not within the lines of said grant. Your Commissioner therefore deemed it best that the true location of the said Morris grant should be first ascertained and settled before proceeding to investigate the other matters before him, and with that end in view he has conducted his proceedings this far under the 9th. special requirement of the decree of reference which directs him to inquire, ascertain and report the true and correct location of the said Morris Grant.

The depositions taken before your Commissioner and the record of his proceedings herein are in two volumes namely: Volume 1 containing 696 Typewritten pages, and Volume 2, 588 typewritten pages and labelled with the style of the cause, and duly certified under the hand of your Commissioner. These depositions with all plats, maps and exhibits of every kind filed with your Commissioner are returned with and made a part of this report. For convenience in taking depositions, all of the defendants other than

Henry C. King were designated as "The Contesting Defendants" and they are so styled in the record and depositions,
page 287.] and will be so referred to in this report.

That after the testimony was completed and closed the contesting defendants and the defendant Henry C. King by their attorneys appeared before your Commissioner and argued the matter at issue.

Your Commissioner therefore under the said ninth special requirement submits upon the location of the Robert Morris grant the following:

REPORT.

In 1792 the Commonwealth of Virginia modified its then existing land laws and provided a scheme for selling and granting the remainder of its vast domain of unappropriated land, at the nominal consideration of two cents per acre. As a result of this system of disposing of public lands, if the entries, surveys and patents can be considered, there was a rush on the part of those interested, many of whom were no doubt speculators, to acquire a part of this territory and in a comparatively short time the land near the head of Sandy and Guyandotte Rivers and its tributaries was shingled, as it were with surveys upon which grants were issued to private persons.

As a result of the conditions then existing the easiest and quickest method of acquiring title to this public land was resorted to. Surveys were loosely and carelessly made and without much of an effort at accuracy. The surveyor instead of going on the ground and running out the land called for in the entry, which would require considerable time, would, in many instances, lay down a survey in territory of which knew but little, by protraction, and call for natural monuments he had never seen or marked timber that he had never been to and did not exist.

This state of affair existed at the time of the survey of the land
in controversy in this suit, and from an inspection
page 288.] of this record it is manifest to your Commissioner that "Office Surveys"—that is, surveys laid down by

protraction without going on the ground, were common at that time. It is shown that James Taylor, County Surveyor of Wythe County, Virginia, reported as having surveyed upon entries made between the 7th. day of March and the 13th. day of October, 1794, tracts of land aggregating one million nine hundred and *ninty* thousand acres, located on the head waters of Tug and Guyandotte Rivers and their tributaries.

Upon the first day of April 1794, said surveyor Taylor returned a certificate of a survey made by him for Wilson Cary Nicholas and Jacob Kenney of three hundred and twenty thousand acres of land in Wythe and Russell Counties and located on Sandy River. The Western line of this survey is described as running from Four White Oaks' on the North West bank of Knox Creek North 33 degrees East 21 miles, to two poplars and two chestnut trees on a branch of Guyandotte River, six miles from Little War Creek. The location of the Four White Oaks' on Knox Creek has been designated on the map filed by surveyor Stoae as point "P"; and the two poplars and two chestnuts are known as "Muzzle Corner" and designated on the map as point "A".

On the 10th. day of October 1794, Wilson Cary Nicholas made an entry in the surveyors office of Wythe County, for one hundred and twenty thousand acres of land to be laid off adjoining the three hundred and twenty thousand acres made for said Nicholas and Kenney, and another survey of four hundred and eighty thousand acres made for said Nicholas by Taylor on the 19th. of September 1794, beginning at what is now the Muzzle corner "A"; and on the 13th day of some month he made an entry for three hundred and eighty thousand acres adjoining his last entry of one hundred and twenty thousand acres, both to be laid off in one tract of five hundred thousand acres. On the 28th. day of October said Nicholas made an amendment to his entries on the 10th. and 13th. inst. and directed they should be laid off in one survey and containing five hundred thousand acres lying on Sandy and Guyandotte Rivers, beginning at the two poplars and two chestnuts, now known as the Muzzel

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corner, and running with the line of the three hundred and twenty thousand acre survey to the four white oaks' corner, and described therein the courses and distances for the remaining lines to complete the survey.

On the said 28th. day of October, said Taylor returned a certificate of survey of the five hundred thousand acres of land by virtue of the entries on the 19th. and 13th. inst., with field notes and plat. The grant on this survey was issued to Robert Morris, under assignment of said Nicholas, and embraces the land now in controversy.

It is contended by the defendant H. C. King that the the surveyor, James Taylor, never ran this survey upon the ground but platted the same in his office from the lines of the two older surveys before mentioned. The contesting defendants insist that the surveyor actually made this survey upon the ground except the fourth and fifth lines which were laid down by protraction.

The line of investigation mapped out by your Commissioner will necessarily include an examination of the respective theories of the parties.

Starting with the beginning of the Morris grant described as two poplars and two chestnuts, we have no controversy over its location. And your Commissioner is satisfied and so finds that the point "A" (Muzzle Corner) on the Stone map represents the true location of this corner.

The first line of the survey running from the beginning corner to four white oaks on Knox Creek is correctly located on said map and properly described in the decree of the Circuit Court of Wyoming County, on the 30th. day of September 1897. Coming to the four white oaks' corner, it is shown by the evidence of Daniel Harmon, that he saw three marked white oaks, standing at or near the place represented by point "P" on said Stone map frequently between 1843 and 1852, and in the latter year while surveying the lines of the three hundred and twenty thousand acre grant he ran to these trees, and on to "Muzzle Corner". That the trees were marked as a

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corner for the said three hundred and twenty thousand acre survey. No body ever saw more than three marked oak trees standing at this point. None of the trees were ever blocked with a view of determining the age of the hacks. The location of the trees conforms to the description in the survey, and is practically on the course, yet, the line if stopped at this point is about seven miles short of the distance called for in the survey. This point has been made a common corner by both sides in the location of the grant and it was *conceeded* by the contesting defendants in the argument before your Commissioner that it is the South East Corner of the grant; and there is no evidence to the contrary. Your Commissioner finds that the point "P" on said Stone map, represents the true location of the corner described in the grant as four white oaks on the North West bank of Knox Creek.

Leaving the four white oaks' corner and following the other lines of this grant we are confronted at almost every step with conflict and confusion.

Your Commissioner finds that the white oak trees, at point "P" were not marked on the West side. The defendant King insists that the line from the four white oaks' corner should be run the course, with proper variation, and distance called for in the patent, to point "H", 3840 poles or twelve miles, as laid down on the Stone map. The contesting defendants contend that the line should be run from the corner North 79 degrees 20 minutes West 23 60 poles or seven and three eights miles, to a point on the right fork of Race Fork in Buchannan County, Virginia, near the house of one Dan Justus, and designated on said Stone map as point "S", where it is alleged the location of the three poplars and a sugar tree corner, called for in the grant as the South West corner of the grant, has been discovered, or in the event that this point should be determined, not to be such corner, then the said line should be run along the line from "P" to "H" on said map, to a point where a line from Gilbert Creek through the mouth of Turkey Creek and extended, would intersect it, which would be about the point Q 2 on the Stone map.

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The contesting defendants filed in evidence before your Commissioner a block taken from a poplar tree standing about three fourths of a mile West of the four white oaks' corner, showing two hack marks in the bark. These hacks had not entered the wood. The evidence as to the age of the marks in this block is conflicting, and there is so much uncertainty surrounding the subject, that your Commissioner has not given any weight to this block. Proceeding to the alleged corner designated on the map as "S", the contesting defendants claim, that the three poplars and sugar tree corner has been located in a small hollow, on the right hand fork of the Race Fork of Knox Creek, about one hundred and seventy five yards up the hollow from the house of Dan Justus. It is claimed that the two poplars and a sugar tree, marked on the East and North or North East sides, as corner trees, stood at the point. A great deal of testimony has been taken by both sides on this question. This testimony is in its nature so conflicting that it is impossible to harmonize a great deal of it upon any theory, although in some cases your Commissioner was impressed that witnesses were mistaken.

After giving this testimony due consideration, and such weight as is entitled, your Commissioner is satisfied that a sugar tree never stood at the point claimed, and there is no evidence whatever of the existence of a third poplar at this place.

That two large poplars did stand at this point and same were cut down about five years since, and the log of the lower tree is now lying in the drain a short distance below the stump whence it came; and that these trees were never marked as a corner of the Morris grant.

Your Commissioner therefore reports that this
page 292.] point is not the location of the South West Corner of the grant.

Beginning now at a point Q 2 in order to determine whether the line from there to the mouth of Gilbert Creek (Z Z on map) is correctly located, it is found that this line running towards Gilbert crosses Knox Creek at about four and one half miles, Sandy River

at about thirteen miles near the mouth of Turkey Creek; the ridge dividing the waters of Sandy and Guyandotte Rivers, and crosses Gilbert Creek twice, which in these particulars conforms very closely to the description in the grant. This line does not run North as called for in the grant, but runs 39 degrees to the East of north, and is about four miles short of the distance called for. It does not cross Buffalo and Pigeon Creeks as called for in the grant and survey,—its nearest point being about seven miles from the head of Pigeon Creek and no such creek as Buffalo Creek has been shown to have existed in that locality.

Your Commissioner finds that the creek now known as Turkey Creek and near which the line Q 2—ZZ crosses Sandy River, acquired its present name, since the date of the survey of this grant by James Taylor, and is not the Turkey Creek referred to in said Taylor's certificate of survey.

The next point of investigation is Gilbert Creek.

The evidence in the case fully convinces your Commissioner that the stream known at the present day as Gilbert Creek, flowing into Guyandotte River, in the Southern end of Mingo County, took its name from the killing of Joseph Gilbert thereon, by the Indians about 1792. The historic account of the death of Gilbert, filed in the case, gives no authority for fixing the event in 1792. Yet your Commissioner is of the opinion that it occurred before the survey of the Morris grant by Taylor, and that said date is approximately correct. When the name, Gilbert Creek, began to be applied to this Creek, however, is a matter of some uncertainty.

The original name of the creek was War Creek.

page 293.] In 1783 Edward Crawford made an entry in Montgomery County for 248 acres on Big Guyandotte at the mouth of War Creek, and in 1798 Thomas Cloyd surveyor, surveyed this entry out at the mouth of the present Gilbert Creek, describing it as War Creek in the survey. This land was described on the land books of Montgomery and Logan Counties, up to 1829 as situate on "War Creek" and it appears that this creek was not described as "Gilbert Creek" on the land books of either of said

counties, until after 1829. Other surveys made prior to 1790 for lands described as located on War Creek of Guyandotte River have been filed, but there is no evidence before your Commissioner showing the location of these surveys at the present day.

It is claimed that the three marked sugar trees called for in the Taylor survey stood on the lower side of this creek in a bottom. Where the creek now enters the river the point claimed as the location of said sugar trees would be on the bank of the creek and in that respect would not conform to the description. Witnesses have been introduced to show that the creek in early days entered the river above where it does now. Upon this question there is some conflict of testimony, but the evidence preponderates that there has been a change in the location of the mouth of this creek within the recollection of men still living; but that the creek formerly entered the river a sufficient distance above its present mouth to accommodate the point claimed as the location of these trees to the description in the survey and grant is doubtful. It does not appear to your Commissioner upon considering all matters surrounding this creek, in evidence, that its location has been changed at its mouth to any considerable or material extent since the date of the Morris survey. *Compairing* the survey and *platt* of the Crawford 248 acres located at the mouth of this creek, made in 1798, which impresses your Commissioner was surveyed on the ground with considerable accuracy, with a *platt* made from a recent survey of the same tract, filed in this case, and taking into consideration all other evidence on the subject your Com-

page 294.] missioner is of the opinion that this creek at the date of the Taylor survey entered the river practically where it does now.

Upon the question of the three sugar trees called for in the grant at the mouth of Gilber Creek, the evidence of the witness Frederick Trent is insufficient to lead your Commissioner to conclude that the witness saw trees marked by James Taylor. The testimony of the remaining witnesses who claim to have seen, sometime between the years 1840 and 1845, three sugar trees

standing in that bottom, marked as a corner, is so contradictory in its character of what your Commissioner deems undisputed facts, and so conflicting with the testimony of the other witnesses who have testified on this question, that the same cannot be reconciled with the other evidence before your Commissioner upon the question. There is testimony tending to show that a corner of the Crawford survey stood about 20 poles below the mouth of Gilbert Creek on Guyandotte River. Your Commissioner is of the opinion that the bottom near the mouth of the creek was cleared and fenced as *earley* as 1838 and very likely before that time and that no sugar trees marked as a corner stood in that bottom at a later date.

Your Commissioner has taken into consideration the alleged statement of Isaac Spratt, testified to as having been made to the witness Spratt and Stafford, when they were boys, concerning this corner, with the testimony of the witnesses relating to the sugar stumps in connection with all the facts and circumstances surrounding this matter, and finds the same insufficient to establish anything in this case. From the evidence in this case your Commissioner is of the opinion that surveyor James Taylor did not mark a corner of this survey at the mouth of Gilbert Creek and was not at the mouth of said creek in connection with the survey of the Morris grant.

Your Commissioner therefore concludes from this evidence that James Taylor never ran any of the lines of this survey on the ground except the line from "A" to "P" which he ran in surveying the three hundred and twenty thousand acre tract, and that this—the Morris survey was laid down on paper by protraction, and joined to the said line "A", "P."

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Your Commissioner is satisfied that James Taylor, at the time of platting this survey had no accurate information or knowledge as to the location of Gilbert Creek, but supposed the same, (if he intended to run to the present Gilbert Creek,) to be a different section of country several miles West of where it really is.

Reaching this conclusion the question before your Commissioner is the location of the lines of the grant, as it is apparent that the line Q, 2, to Z Z is not the correct location of the third line thereof. Your Commissioner believes it to be the settled rule of law in this state that known monuments shall control course, distance and quantity in determining the boundaries of land, but in this case shall we look for the monuments where they exist to day, or where the surveyor supposed they were located when he platted the lines? If in the former how shall we reconcile the conflict between them in the calls of the grant? Your Commissioner believes that owing to the confusion and uncertainty, surrounding the monuments called for that it is impossible to locate this survey by them, and that the most certain way to locate the said survey and effect the manifest intent of the *partities*, will be obtained by following the courses and distances, from the four white oaks' corner except as hereafter referred to.

Your Commissioner therefore reports that the line from "P" to "H" and the line from "H" to "I" as laid down on the Stone map and described in the said decree of the Wyoming Circuit Court entered in this case, represents the true location of the second and third line of the grant.

As has already been shown the line from "A" to "P" is about seven miles short of the distance called for. This discrepancy affects the line from "I" to pointers designated on the Stone map as "J", and places the location of this corner, a distance equal to the said discrepancy, too far North. In the opinion of your Commissioner it was not the intention to cover any land by this grant North of a line due West of point "M" as shown on the said map. Therefore your Commissioner reports that the fourth line of this grant should begin at point "I" on the Stone map and run with the line "I" to "J" as shown on said map, about 2560 poles, or a distance sufficient to intersect a line due West from point "M" on said map; thence due East to a point "M" on said map and from point "M" to the beginning corner at "A".

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Your Commissioner in this report intends to confirm the loca-

tion of this tract as described in the Wyoming decree except as to the line from "I" to "J" which should be shortened as herein set out, and the Northern *boundry* of the tract, which should not include any land North of point "M" on the Stone map.

The defendant William H. Lawson, trustee, has directed your Commissioner to report whether the land claimed by him is situated within the boundaries of the Morris grant.

Under this requirement your *Commissioner* reports that the two tracts of land in which the said Lawson Trustee claims an estate in fee simple in the minerals containing 156 1-10 and 100 acres, situate on Beech Creek, in Mingo County, West Virginia are within the boundaries of the Morris grant .

Your Commissioner, has made no investigation upon the question of title and ownership of the land within the boundaries of the said Morris grant, as all questions other than that of the location of said grant are pending undetermined and will be reported on hereafter. Your Commissioner has been anxious to complete and file this report in your honors said court, at this the present March term, thereof, and has not had time to investigate and report on the special matter requested by defendant King. The matters contained in this request appear to be outside of the decree of reference and your Commissioner returns same with this report,

page 297.] with request that the court advise him whether a report is necessary to be made thereon.

Your Commissioner will report and file a supplemental report relating to costs and charges incurred in making this report.

Respectfully submitted,

J. T. GRAHAM,

Commissioner.

Fee for service unpaid..... $1000.00

page 298.] I, J. T. Graham, Commissioner in Chancery, do certify that the foregoing report, in the case of State of West Virginia against Henry C. King and others was completed and filed by me in my office on this the 21st. day of

March, 1903, and notice thereof was personally given by me to J. S. Marcum attorney for the State and C. W. Campbell of counsel for contesting defendant, and notice in writing was duly mailed by me to M. F. Styles, attorney for the defendant King, and John A. Sheppard and S. B. Kelley counsel for contesting defendants, A. C. Hall and J. C. Ellison.

Given under my hand this the 21st. day of March 1903.

J. T. GRAHAM,
Commissioner.

REPORT OF COMMISSIONER GRAHAM UPON COSTS.

State of West Virginia,
page 299.] *vs.*)*In Chancery.*
Henry C. King

To the Hon. E. S. Doolittle, Judge of the Circuit Court of Cabel *County, West Virginia*:

The undersigned, J. T. Graham, Commissioner in Chancery of your said Court would respectfully file this, its supplemental report, to a report filed by him in the above styled cause.

Your Commissioner reports that in executing the requirements of the decree of reference upon the matters contained in his report the following costs were incurred:

FOR PUBLISHING NOTICE.

Huntington Advertiser	$129.23
Wyoming Herald	129.23
Logan County	129.23
McDowell Recorder	129.23
Southern West Virginian	129.23
Total	$646.15

In ascertaining the amount due each of the aforesaid publishers your Commissioner averaged the claims of each of them filed with him. This expense for publication relates in part to matters outside of the regular requirements of the decree of reference and we believe that one half of it should be borne by the parties who are interested in the special requirements of the decree of reference.

Your Commissioner reports that the costs incurred by the contesting defendants for fees and mileage due witnesses produced by them before your Commissioner is as follows:

page 300.]	Name of Witnesses	Amount Paid.
	Andrew Baker	$ 4.70
	Miles Lester	5.40
	Levi Lester	7.00
	Wayne Justus	7.20
	W. A. Lester	7.00
	Riley Lester	6.10
	J. H. Lester	7.00
	G. S. Stone	5.00
	W. D. Sell	17.60
	Frederick Trent	7.50
	R. P. Spratt	6.80
	F. S. Stafford	7.40
	Thomas J. Mathews	28.40
	N. L. Reynolds	23.60
	George Fuller	5.20
	Hiram M. Smith	4.50
	John Charles	3.10
	Calvin Lester	3.70
	Sarah Charles	1.50
	Robert Justus	8.20
	Samuel Justus	6.80
	A. J. Ellis	1.00
	John R. Browning	1.80
	Calvin Burgess	1.00
	Alexander Trent	1.00
	Edmund Browning	2.25

C. H. Gore	1.00
Simpson Ellis	1.30
Henry Danials	1.50
James McCoy	1.50
Peyton Johnson	1.40
Daniel Wolford	4.00
Joseph Simpkins	1.00
Allen J. Sheppard	3.00
W. B. Mead	5.00
Andrew Baker	5.70
George Charles	5.70
Moses Charles	5.70
Hiram Layne	6.70
Joshua Justus	5.50
Andrew Justus	6.40
James R. Justus	6.20
David Carter	5.70
Daniel Blankenship	5.30
Larkin Smith	5.20
Thomas Carter	5.40
Floyd Hatfield	4.30
Jacob Lester	8.50
Alfred Wolford	5.10
A. C. Stacey	5.00
Harlan Smith	5.00
James R. Justus	4.80
Hiram Hall	4.80
H. M. Coleman	5.80
Adam Justus	5.80
Harrison Justus	2.00
Hiram Layne	6.40
Jackson Lester	6.00
Balance Forward	$328.45
page 301.] Brought forward	$328.45
Jefferson Layne	6.00
J. E. Hall	5.90

Liftwidge Justus	6.20
Floyd Justus	6.20
Isiah Layne	6.30
W. W. Justus	7.40
J. S. Smith	7.40
K. H. Justus	6.60
John Justus	7.90
Wylie Justus	6.80
Eligah Estep	6.90
John C. McCoy	8.60
F. A. J. Ferrell	1.00
Henderson Varney	1.00
Isabel Rutherford	1.00
John Harrison Lester	2.40
Curtis Lester	2.40
Samuel McInturff	16.20
Cora McInturff	16.20
Claude L. Gaujot	12.80
C. S. Stone	16.50
Thomas J. Mathews	9.20
Curtis Lester	1.80
George Childers	19.90
Henry Blankenship	18.50
Levi Blankenship	18.50
Jacob Kline	18.50
Eugene Ellicott	16.30
Edgar P. Rucker	1.00
C. Crane	1.00
J. S. Thurmond	12.40
Thomas Boggess Sr.	2.50
Thomas Boggess Jr	2.50
G. S. Stone	1.00
Thomas J. Mathews	6.60
J. L. Thornburg	1.00

N. L. Reynolds	4.90
Total	$615.75

The cost incurred by H. C. King for fees and *milige* due witnesses produced by him before your Commissioner is as follows:

Name of Witness	Amount Paid
James M. Gibbony	$ 16.90
B. U. Morgan	2.10
A. B. Workman	2.20
Willard Morgan	2.00
R. L. Brewster	2.30
Lewis Bailey	1.90
Balance Forward	$ 27.40
page 302.] Brought Forward	$ 27.40
Hiram Christian	2.40
E. M. Senter	1.80
James Allison	3.60
W. B. Higginbotham	3.50
F. M. Deskins	1.30
Connelly Blankenship	2.30
George Hatfield	1.10
Rhodes D. Trent	2.30
James R. Henderson	1.40
Noah Burchfield	23.50
W. C. Reddy	3.00
C. V. Bromelly	5.50
B. Mills	6.40
Thomas Boggess	1.00
W. L. Wilson	1.00
G. A. Deskins	2.50
G. R. Counts	1.00
Margaret Mans	1.25
D. L. Anvil	1.00
H. K. Shumate	1.00
Agatha Brown	6.50

Roxelena Trent	6.50
W. A. Forsythe	1.00
Thomas M. Robinett	5.50
J. W. Stafford	7.10
L. G. Stacey	7.00
James M. Charles	5.50
Reece Davis	9.25
James Hatfield	6.45
Flora Ann Hatfield	6.45
A. L. Robinett	4.60
Julina Justus	7.00
Elvira Justus	7.00
Fred Justus	7.00
John Justus	7.00
Andy Justus	8.00
Adam Justus	8.30
John J. Justus	7.00
Loventia Stafford	7.30
Daniel Justus	9.25
Sinnet Justus	9.25
Morgan Justus	10.30
W. W. Baldwin	13.70
S. A. D. Baldwin	12.80
Ezekial Canterbury	4.00
George W. Morgan	3.00
Layfaette Justus	5.60
Wayne Justus	6.60
Samuel Justus	5.50
Jackson Bailey	5.30
J. C. Christian	1.00
D. H. Harmon	1.00
S. M. Graham	5.00
W. D. Sell	6.00
George Hatfield	1.00

W. L. Wilson 1.00

Total $307.00

page 303.] Cost and expense of W. C. Reddy, surveyor..$128.55

Amount paid Commissioner for services and expense—

By contesting defendants on service 502.23
By the defendant H. C. King for services 331.25
By contesting defendants on expenses 224.41
By defendant H. C. King on expenses 91.14

Your Commisssioner here represents that the amount received by him from the parties as above stated is not sufficient to compensate him for his services. Your Commissioner has been engaged since the 22nd day of April, 1902 in this case and has practically devoted all his time and attention to it since that date. That in collecting the testimony he found it necessary to travel nearly five thousand miles.

Your Commissioner here states that the sum of seventy-five per hour is insufficient to compensate him for his service in making this report. In view of the responsibilities resting upon your Commissioner in this matter and the importance of the subject matter involved he believes he is entitled to a liberal sum in payment for his said services.

Your Commissioner therefore prays that your honor will direct that he be paid a reasonable and liberal sum for his services by the parties interested in the subject matter of this report.

Respectfully submitted,

J. T. GRAHAM, *Commissioner.*

EXCEPTIONS OF *SURREY* DEFENDANTS TO COMMISSIONER'S REPORT.

State of West Virginia
page 304.] *vs.*) *In Chancery.*
Henry C. King, et als.

Pending in the Circuit Court of Cabell County, West Virginia.

To the Honorable E. S. Doolittle, Judge of said court:

Exception taken by the undersigned contesting defendants to the report made in the above styled cause by Commissioner John T. Graham upon the question of the location of the tract of land in question in said cause and therein known as the Morris or King tract called 500,000 acres. The undersigned contesting defendants except and object to the report of said Commissioner, and to each and all the findings therein contained, and make the following specification of exceptions:

First: Because of the general observation of said Commissioner that office surveys were common at the time of the making of the Morris survey, and his consequent conclusion that Surveyor James Taylor platted or protracted the lines of the survey in question without surveying or locating the same on the ground and called for natural monuments he had never seen and for trees he had never seen or marked as corners, thereby making what he terms an "office survey", which conclusions and finding are contrary to the great preponderance of the evidence in this case. Whereas the said commissioner should have reported according to the preponderance of evidence in the case that said Surveyor was on the grounds and marked the corner trees called for and saw and knew the location of the natural monuments called for as
page 305.] fixing the boundary lines of said survey, and that he located and surveyed the lines of the said tract of land.

Second: Because said Commissioner found and reported the line shown on Surveyor Stone's map by the letters "A" "P" and the point P to be the true location of the first line and the second corner of said survey when such finding is contrary to the evidence in this case.

Third: Because said Commissioner found and reported that the point P on Stone's map is the true location of the corner called for as "four white oaks" on the northwestern bank of Knox Creek, such finding being contrary to the evidence and there being no evidence in the case whatever that the point P on Stone's map is the former location of the "four white oaks", and further because it was not admitted by contesting defendants as a fact, in argument, or otherwise, as stated in said report, that the line A. P. and the point P was the true line and corner. These were left to be established by proof as the other corners.

Fourth: Because said Commissioner finds that the three white oaks seen by witness Harman were not marked on the west sides, and allows this finding to have much weight in deciding as he does that the second line of the survey was not run by surveyor Taylor, but was protracted; whereas he should have found under the evidence of Surveyor Mathews and the act of Assembly of Virginia, passed in 1792, that this fact if true was unimportant and did not determine that the said second line was not run on the ground.

Fifth: Because said Commissioner found and reported that the second line of the survey called for as leaving the four white oaks and "crossing Knox Creek and several Branches thereof &c" to "three poplars and a sugar tree by a small branch of Knox Creek" was not run but platted by said surveyor Taylor; and because he gave no weight to the line tree found and proven along this line, but found that the evidence was too con-

page 306.] flicting to entitle the marks in such line tree to any weight.

Whereas according to the great preponderance of the evidence in the case said Commissioner should have found and reported that said poplar tree was marked as a line tree in the running of the

second line of the survey in question, and that said line was actually run and marked by Surveyor Taylor.

Sixth: Because said Commissioner found and reported contrary to the preponderance of the evidence in the case that the second line of the survey should be located by leaving the point P on the map and running on the course given in the survey the full distance of the call 3840 poles to the point "H" on the map: Whereas he should have reported according to the evidence that the true location of the said second line of the survey is described on the map by the line P. S.

Seventh: Because said Commissioner found and reported contrary to the evidence that "a sugar tree never stood at the point claimed (point S) and there is no evidence whatever of the existence of a third poplar at this place", and that the two large poplars shown to have stood at point "S" were never marked as a corner of the Morris Grant"; whereas he should have found according to the evidence aforesaid that a sugar tree and three poplars did stand at the point "S" and that they were marked as the third corner of the survey in question and he should not have permitted the absence of one of the poplars at this late day to weigh more in the location of this corner than the absence of one of the four white oaks in the location of the second corner of the survey, and because said Commissioner reported that the point "S" is not the location of the southwest corner of the grant when in fact it is shown to be such by the evidence in the case and the Commissioner should have found so.

Eighth: The observation of said Commissioner as contained in his report on page nine in dealing with the line
page 307.] from Q2 to ZZ are excepted to as improper and containing false deductions from the evidence and erroneous conclusion of law.

Because it is apparent that he is in this instance following course and distance to the utter disregard of monuments found and identified, and allows the absence of Buffalo Creek and Pigeon Creek on the line north 8000 poles where two branches of Ben Creek are crossed in their stead to control him in the location of

the line as against at least 10 other monuments found along the line and at the ends thereof as called for by Surveyor Taylor.

Ninth: Because said Commissioner found and reported that "the Creek now known as Turkey Creek" * * " is not the Turkey Creek referred to in said Taylor's certificate of survey", which finding is contrary to the evidence; whereas he should *he* have reported that said Turkey Creek is the same Creek called for in the Survey of Taylor at the mouth of which the third line of the survey crossed Tug River, as is shown by the evidence on this subject.

Tenth: The observations of said Commissioner on pages 9, 10 and 11 of his report as to the identity of Gilbert's Creek and the question of whether it is the Creek called for by James Taylor in his survey, and his use of the Crawford survey to determine his conclusion against the identity of Gilbert's Creek as the one called for by Taylor, are excepted to; and his impressions as set forth in said observations are challenged as unwarranted by the evidence in the case contradictory of themselves, and his conclusions derived are contrary to the evidence in the case upon the subject, and in absolute disregard of the great weight of undisputed evidence on the subject.

Eleventh: The finding of said Commissioner that the location of the mouth of Gilbert's Creek has not been changed "to any considerable or material extent since the date of the Morris survey" and his consequent holding that said creek did not originally empty into Guyandotte River at the point fixed by evidence and designated by the small sycamore tree or at a point "sufficient distance above its present mouth to accommodate the point claimed as the location of these trees (3 sugars) to the description in the survey and grant" is likewise excepted to as ignoring all the evidence on the subject and against the same. Whereas said Commissioner should have found in favor of the evidence that said creek did originally empty into the river at the point where the small sycamore tree now stands, and about 20 poles above the former location of the three sugar tree corner

page 308.]

called for as the fourth corner of the survey designated on Stone's map as "ZZ".

Twelfth: Because said Commissioner finds and reports upon the fourth corner of the survey called for as three sugar trees in a bottom of Guyandotte River and about 20 poles below the mouth of Gilbert's Creek as follows: "The evidence of the witness Fredrick Trent is insufficient to lead your commissioner to conclude that the witness saw trees marked by James Taylor. The testimony of the remaining witnesses who claim to have seen sometime between the year 1840 and 1845 three sugar trees standing in that bottom marked as a corner is so contradictory in its character of what your Commissioner deems undisputed facts and so conflicting with the testimony of the other witnesses who have testified on this question that the same cannot be reconciled with the other evidence before your Commissioner upon this question". And further because he finds the declaration of Isaac Spratt as testified to by witnesses Spratt and F. S. Stafford "insufficient to establish anything in this case". And further because said Commissioner finds and reports upon said corner as follows: "From the evidence of this case your Commissioner is of opinion that Surveyor James Taylor did not mark a corner of this survey at the mouth of Gilbert Creek and was not at the mouth of said Creek in connection with the survey of the Morris Grant". [page 309.]

These findings and each of them are contrary to all known rules of law governing the location of corners and lines of surveys.

The finding of said Commissioner should have been according to the evidence that the evidence of the witnesses mentioned in connection with the other facts and circumstances in the case clearly established the point "ZZ" on the map as the former situation of the three sugar trees called for as the fourth corner of the survey and that they as seen and testified to by the witnesses were marked by surveyor Taylor in making the survey of the Morris tract as a corner thereof.

Thirteenth: Because soid Commissioner found and reported as follows: "that James Taylor never ran any of the lines of this

survey on the ground except the line from "A" to "P", which he ran in surveying the three hundred and twenty thousand acre tract, and that this, the Morris survey, was laid down on paper by protraction and poined to the *aid* line "A" "P". Your Commissioner is satisfied that James Taylor at the time of platting this survey had no accurate information or knowledge as to the location of Gilbert Creek, but supposed the same, if he intended to run to the present Gilbert Creek to be in a different section of country several miles west of where it really is."

These findings are contrary to the evidence in the case and without evidence to support them.

Said Commissioner should have found and reported according to the evidence that Surveyor Taylor did run out and locate upon the ground all the lines of said survey, except the fourth and fifth lines which were platted, and further that said surveyor Taylor knew the location of Gilbert's Creek and the other natural monuments called for as fixed the boundard lines of the Morris tract, and was at them in making the survey of the tract, and with such knowledge of their location, called for them as

page 310.] monuments to fix the location of the boundary lines of said Morris tract.

Fifteenth: The following expression *is* said report is excepted this case is an exception to the established rule that known monuments shall control course and distance and quantity in determining the boundaries of land.

Such finding is contrary and in violation of the rule of law, he admits, when applied to the evidence in this case, and the evidence in this case does not make out an exception to the admitted rule.

Fifteenth: The following expression is said report is excepted to "but in this case shall we look for the monuments where they exist today or where the surveyor supposed they were located when he platted the lines. If in the former, how shall we reconcile the conflict between them in (and) the calls of the grant".

This expression is without foundation in fact on which to stand, and it is inconceivable that a commissioner would close his eyes to facts proven by circumstances and the best people in a com-

munity, as in this case, and soar out into dreamy imaginations of what surveyor might have supposed in 1794; and that a commissioner would in the same breath announce a rule of law and violate it. He should have found that the course of the third line of the survey (being the one he had in mind in this connection) should be so varied as to run through the line monuments and reach Guyandotte River twenty poles below the mouth of Gilbert's Creek. Such a surrender of course to monuments would have dispelled from the Commissioner's mind all doubt and imaginary conflict of evidence.

Sixteenth: The expression of the belief of the Commissioner "that owing to the confusion and uncertainty surrounding the monuments called for that it is impossible to locate this survey by them" is likewise excepted to as improper and is an unwarranted deduction of conclusion from the evidence.

page 311.]

Seventeenth: Because said Commisssioner found and reported as follows: "Your Commissioner therefore *repoears* that the line from "P" to "H" and the line from "H" to "I" as laid down on the Stone map and described in the said decree of Wyoming Circuit Court entered in this case represents the true location of the second and third lines of the grant."

This finding is contrary to the law and evidence of this case and without law and evidence to support it.

His finding should have been under the evidence in the case, and the law governing the location of the line that the true location of the second and third lines of the survey is indicated on the Stone map by the letters "P" to "S" and "S" to "ZZ".

And further because said Commissioner locates the fourth line of the survey as extending along the course given in the survey a distance of 2560 feet from "I" to an imaginary point.

Said Commissioner should have found and reported that the true location of the fourth line of the survey is according to the evidence represented on Stone map by the letters "ZZ" "M. O." and further because said Commissioner fixed the fifth line of said survey by protracting a line from point "M" to a point of inter-

section with a line drawn from "I" to "J". Whereas he should have found and reported that the true location of the fifth line of the survey is represented on the Stone by the letters "M. O." to "M. M." as is shown by the proponderance of the evidence in the case; and further because said Commissioner contrary to the evidence in the case found and reported that the sixth and last line of the survey should be located by protracting a line from the point "M" to the point "A" on the Stone map. Whereas he should have found and reported the true location of said line to be determined by running the line of the 480,000

page 312.] acre tract north from point "A" with proper variation along the distance call in the survey 6800 poles until the same reaches Guyandotte River, which point is designated by the letters "M, M." and that the line indicated on Stone map by the letters "M" "A" is the true location of the last line of the Morris tract in question.

These defendants except to the whole of said report and every finding of fact and rule of law applied therein and pray that the same may be set aside and reversed.

Respectfully submitted,

Arthur D. Bright
Arthur D. Bright, trustee,
Egbert Mills, Jr.
Egbert Mills, Jr., trustee,
William H. Lawson
William H. Lawson, trustee
William Knonenwett
Mitchell Hatfield
Augusta Ferrell
L. D. Chambers
William E. Chilton
Alex McClintock
John McClintock
Z. T. Vinson, Receiver
Forest Coal Company
Panhandle Coal & Iron Co.

Spruce Coal & Lumber Company
Graytor Water Works & Imp Co.
Graytor Ming. Co.
Stuart Wood
Richard Torpin, trustee
Geo. Whorton Pepper, trustee
John Lambert, Jr., trustee
J. D. Sergeant
L. M. Holt
Mary Perry
J. P. Hutchison
A. W. Watson
John Kenneda
C. W. Brockunior
H. P. Duty
James Hatfield
J. C. Williamson
Bruce McDonald
Millard McDonald
F. M. Trent
Cloyd Bailey
Crockett Allison
J. C. B. Toler
A. H. Toler
Mary Toler
Laura Toler
Nettie Toler
King Hiram Blankenship
Leandor Ellis
L. B. Sipples
John Q. Dickerson
J. L. Caldwell
C. W. Campbell
C. W. Campbell Trustee
Charles L. Tracy
William McGee

J. D. Alderson
Bilton McDonald
Moses Blankenship
J. M. Blankenship

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page 313.] EXCEPTIONS OF DEFENDANT KING TO COMMISSIONERS REPORT.

IN THE CIRCUIT COURT OF WEST VIRGINIA FOR THE COUNTY OF MARION.

STATE OF WEST VA.
vs.) *IN CHANCERY.*
HENRY C. KING ET ALS.

Exceptions of Henry C. King to the report of Commissioner John T. Graham, Esq., upon the question of the Proper Location of the Robert Morris 500,000 acre Grant.

To the Honorable John W. Mason, Judge of said county.

The defendant, Henry C. King, objects and excepts to so much, and only so much, of the report of John T. Graham, Esq., Commissioner therein, filed in this cause on the 31st day of March, 1903, as relates to the location of the fourth and fifth lines of said grant, and finds for said lines a location variant from the location thereof ascertained and established by the decree entered in this cause by the Circuit Court for Wyoming county on the 30th day of September, 1897, and says that said commissioner should not have terminated said fourth line short of the patent distance, but should have found and reported that the location thereof was to be determined by running said line its patent distance, 4450 poles, from the point indicated by the letter "I" to the point indicated by the letter "J" on the "Stone" map; and that said commissioner should *have* found

and reported that the proper location of said fifth line is from said latter point, "J" to the point indicated by the
page 314.] letter "M" on said "Stone" map, as said two lines are located and established by said decree.

This said defendant, King, therefore prays that said report be reversed so far and only so far, as relates to the location of said fourth and fifth lines of said grant, and the location thereof established by said decree of September 30th, 1897 be by the court substituted for that given by said report, and that in all other respects said report be confirmed.

HENRY C. KING,
By MAYNARD F. STILES,
his Counsel.

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page 315.] ADDITIONAL EXCEPTIONS OF SUNDRY DEFENDANTS TO COMMISSIONERS REPORT.

State of West Virginia
, *vs.*) *In Chancery.*
Henry C. King et als.

Pending in the Circuit Court of Marion County, West Virginia.

To the Honorable John W. Mason, Judge of said Court:

The undersigned defendants further except to the report of Commissioner John T. Graham, upon the question of the location of the tract of land in question in the above styled cause, and known therein as the Morris or King tract called 500,000 acres, and for grounds of exceptions say:

EIGHTEENTH: Because said Commissioner, during the progress of his proceedings and in the preparation of his said report, took, read, considered and gave weight to the testimony of certain witnesses introduced by defendant Hery C. King, con-

cerning the names of certain streams or water courses mentioned and called for as included in, making parts of, and determining the boundary lines of the said Morris or King tract of land as the same is described in the survey thereof made by James Taylor, surveyor, which evidence was, and is, incompetent, irrelevant and inadmissible, and *no* weight should have been given thereto by said Commissioner. Such incompetent and irrelevant testimony was given by the witnesses folowing, beginning at the pages following as found in the typewritten evidence:

R. L. Bruster,	Vol.	2,	Page 22,
Lewis Bailey,	"	2,	" 29,
Hiram Christian,	"	2,	" 31,
James Allison,	"	2,	" 42,
W. B. Higginbotham,	"	2,	" 44,
page 316.] F. M. Deskins,	"	2,	" 46.
Connally Blankenship,	"	2,	" 48,
George Hatfield,	"	2,	" 48,
Rhodes D. Trent,	"	2,	" 55,
Noah Burchfield,	"	2,	" 61,
Thomas Boggess,	"	2,	" 145,
G. A. Deskins,	"	2,	" 164,
Agatha Brown,	"	2,	" 190,
Roxeline Trent,	"	2,	" 199,
Thomas Robinett,	"	2,	" 205,
J. W. Stafford,	"	2,	" 216,
A. L. Robinett,	"	2,	" 307,
Leventia Stafford,	"	2,	" 354,
George W. Morgan,	"	2,	" 415,
Jackson Bailey,	"	2,	" 443,
B. U. Morgan,	"	2,	" 5,
A. B. Workman,	"	2,	" 10,
Williard Morgan,	"	2,	" 18,
Ezkeal Canterbury,	"	2,	" 412,

And because there is no evidence to support the finding of

said Commissioner on the question of boundary, except the irrelevant and inadmissible testimony hereinbefore mentioned.

The testimony of the foregoing witnesses, and each of them, is inadmissible, because:

(a) It is hearsay;

(b) It does not fall within any exception to the rule excluding hearsay evidence;

(c) It is declarations of deceased individuals not shown to have been so situated as their duty or interest would lead them to diligent inquiry and accurate information as to the fact;

page 317.]

(d) They are recitals by the witnesses of past private conversations;

(e) They are private statements of individuals relating to matters of public concern, namely; the change of the names of prominent water courses, and do not purport to be statements as to the *the* reputation in the community concerning the same.

Respectfully submitted.

Arthur D. Bright,
Arthur D. Bright, trustee,
Egbert Mills, Jr.
Egbert Mills, Jr. trustee
William H. Lawson
William H. Lawson, trustee
William Kronenwett
Mitchell Hatfield
Augusta Ferrell
L. D. Chambers
Alexander McClintock
William E. Chilton
John McClintock
Z. T. Vinson, Receiver
Forest Coal Company
Panhandle Coal & Iron Co.
Spruce Coal & Lumber Co.

Graytor Water Works & Imp. Co.
Graytor Mining Company
Richard Torpin, trustee
Geo. Warton Petter, trustee
John Lambert, Jr., trustee
J. D. Sargeant
L. M. Holt.
Mary Perry
J. P. Hutchinson
S. W. Watson
John Kenada
C. W. Brockunier
H. P. Duty
James Hatfield
Bruce McDonald
Millard McDonald
F. M. Trent
Cloyd Bailey
Julius C. Toler
J. C. B. Toler
A. H. Toler
Mary Toler
Laura Toler
Nettie Toler
King Hiram Blankenship
Leander Ellis
L. B. Sipples
John Q. Dickinson
J. L. Caldwell
C. W. Campbell
C. W. Campbell, trustee
Cockett Allison
Charles L. Tracy
William McGee

J. D. Alderson
Bilton McDonald
Moses Blankenship
J. M. Blankenship
By Counsel .
C. W. CAMPBELL,
J. A. SHEPPARD,
EDWARD D. LYON.

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page 318.] DOCUMENTARY EVIDENCE INTRODUCED BY THE "CONTESTING DEFENDANTS" OR DEFENDANTS OTHER THAN HENRY C. KING—BEFORE COMMISSIONER GRAHAM AND RETURNED BY HIM WITH HIS REPORT.

page 319.] ENTRY NICHOLAS 480000 ACRES
("Lifted")

1794
July 24 Wilson Cary Nicholas by virtue of Twenty-six Land Office Treasury Warrants Numbered 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, & 488 issd the 29th day of May 1794 to Robert Pollard and by him assigned to sd. Nicholas & Numbered 522, 523, 524, 525, 526, 527, 528, 529 & 530 issued the 14th day of June 1794 to Hector Kennaday & by him assd to sd Nicholas who makes the following entry thereon viz. 480,000 acres of land lying in the Counties of Wythe & Montgomery, the greater part thereof in Wythe on Bluestone & Guyandotte Rivers & the waters thereof & to begin at a Walnut *hiccory* & poplar on the Elkhorn fork of Tug River in a botton about ten computed miles above the mouth of the same & to extend up said Creek N East six miles & thence S 80 E 5 3/4 miles N 85 E 1¾ miles—South 27 E 12 miles—East 27 miles N 55 E 10 1/4 miles North seven miles N 30 W 9 miles. N 10 E 12 miles S 83 W 22¾ miles & S 8 W 23½ miles to the

first station to exclude 833 1/4 acres entered the 9th day April 1794, by Joseph Cloyd also 800 acres in three entries made the 21st day of Feby. 1794 by John Leyburn & Gordon Cloyd & other prior *claimes* within said bounds to the amount of six thousand acres for which an allowance is to be made in the survey of this entry when laid off & certified accordingly

County of Wythe:

I, James M. Gibbony—surveyor of Wythe County do hereby certify that the above is a true copy from the records in my office

Given under my hand this 19th day of September 1895.

JAMES M. GIBBONEY, *S. W. C.*

page 320.] ENTRY NICHOLAS 480000 ACRES.

1794.

Sept. 1, Wilson Cary Nicholas assn of James Brown by virtue of ten land office Treasury Warrants for 50,000 acres each numbered 587, 588, 589, 590, 591, 592, 593, 594, 595 & 596 issd. the 29th day of July 1794 enters 500,000 acres of land on Bluestone & Guyandotte Rivers & the branches thereof a part thereof to be in Montgomery County—to begin at 2 poplars a walnut & sugar tree in a bottom on the North side of the main fork of Tug river a branch of Sandy & corner to the last entry of David Pattison's of 150,000 acres & to extend with the same N 25 E 1360 poles N 45 E 1920 po S 80 E 1840 po N 39 E 480 poles & leaving sd entry S 27 E 3840 East 720 N 55 E 3380 North 2240 poles North 30 W 2880 po N 10 E 3840 N 79 W 8640 po & South 11, 260 poles to the beginning to exclude part of the clover bottom and ————and 833 1/4 acres entered the 9th day of April 1794 by Joseph Cloyd also 800 acres in three entries made Feby 21st 1794 by John Leyburn & Gordon Cloyd & other prior claims not particularly mentioned which are within

the bounds of sd entry & for which an allowance of 4000 acres is to be made in the survey & certificate accordingly—

County of Wythe

I, James M. Gibboney surveyor of Wythe County do hereby certify that the above is a true copy for the records in my office

Given under my hand the 19th day of September 1895.

JAMES M. GIBBONEY, *S. W. C.*

page 321.] ENTRY 200,000 ACRES NICHOLAS & KENNEY

(Part of 320,000 Acres)

1794.

March 7, Wilson Cary Nicholas and Jacob Kenney assn of Wilson Cary Nicholas by virtue of Eight Land Office Treasury Warrants No. 228, 229, 230, 231, 232, 233, 234, 235, & dated the 27th day of January 1794 enters 200,000 acres of Land on the waters of Sandy Creek & Guyandotte and some of the waters of Piney River to be bounded on the South by a ridge dividing the waters of Bluestone and Sandy and Guyandotte Creeks, on the West by Wilson Cary Nicholas's entry of 300,000 acres and to extend Northwardly and Eastwardly for Quantity.

County of Wythe

I, James M. Gibbony—Surveyor of Wythe county do hereby certify that the above is a true copy from the records in my office

Given under my hand the 19th day of September 1895.

JAMES M. GIBBONEY, *S. W. C.*

page 322.] ENTRY 120,000 ACRES FOR NICHOLAS & KENNEY.

(Part of 320,000 Acres)

1794.

March 27, Wilson Cary Nicholas & Jacob Kenney Assn of Robert Pollard by virtue of two Land Office treasury Warrants

for 120,000 acres No. 271 & 372 & issued the 5th day of March 1794 enters the same adjoining there entry of 200,000 acres made the seventh instant on the North side & to be together with the said entry laid of in one survey to contain 320,000 acres & to be bounded as follows, viz lying on both sides of sandy Creek in Russell & Wythe counties, the greater part thereof in the latter, & beginning on the Top of a ridge that divides the waters of the Tug fork of Sandy from the waters of Guyandotte & near the head of Brown's Creek & to extend thence leaving the same N 52 W 11 miles N. 30 W 5 1/2 miles with Wilson Cary Nicholas's *entry* of 300,000 S 35 W 36¼ miles N 33 E 21 miles S 52 E 2 3/4 miles N 50 E 12 1/2 miles & S 65 E 10 miles to the beginning—

County of Wythe

I James M. Gibboney—Surveyor of Wythe county do hereby certify that the above is a true copy from the records in my office

Given under my hand this 19th day of September 1895.

JAMES M. GIBBONEY, *S. W. C.*

page 323.] SEE MAP.

page 324.] NICHOLAS 480000 ACRE SURVEY.

(Annulled.)

Surveyed for Wilson Cary Nicholas 480000 acres of land by virtue of an entry made the 24th day of July 1794 on twenty-six land office treasury warrants numbered 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488 is the 29th day of, May 1794 and numbered 522, 523, 524, *325*, 526, 527, 528, 529, and 530 issued the 14th day of June 1794 to Hector Kenneday and by him assigned to said Nicholas lying in the Counties of Wythe and Montgomery the greater part thereof in Wythe, on Bluestone and Guyandotte rivers and the waters thereof and bounded as follows, viz: Beginning at a walnut *hickory* and poplar on the Elkhorn fork of Tug River in a bottom about the compueted miles above the mouth of the same and runneth

thence up the said creek north east six miles to a maple and white oak on bank of said creek S 80 E 5 ¾ miles up said creek to a poplar and maple to the mouth of a fork of said creek N. 85 E. 1 ¾ to four white oaks—S. 27 E. 12 miles crossing the head branches of Elkhorn creek and the ridge that divides the waters of Tug River and Bluestone River and crossing Bluestone River to a *hiccory* and a white oak on the bank of the same at the mouth of Laurel Creek—East 2¼ miles crossing Bluestone River and extending along the Pencle ridge to three buckeye trees in a gap of said ridge —N. 55 E. 10½ miles extending along a small trace and crossing Lortons Lick Creek a branch of Bluestone and up a fork of the same and along the spurrs of the Black Lick Mountain on the north side thereof to three white oak and a black oak on the Spanish Oak Ridge nearly opposite to the mouth of De Lashmutt Creek—north 7 miles crossing Bluestone at two miles at the clover bottom below the mouth of DeLashmutt Creek and along and near the *ole* hunting trace from the clover bottom to Perdues improvements on Richland Creek three and half miles from Bluestone to three white oak and a Spanish oak on a ridge that divides the waters of Richland Creek and Little Wolf Creek a branch of Bluestone N. 30° W. 9 miles along the said ridge on the spurr thereof crossing the head branches of Little Wolf Creek and the head branches of Camp Creek to a sugar tree, Lynn and Cucumber tree by a spring of Guyandotte on the flat top mountain opposite to the head of a fork of Camp Creek— N. 10 E. 12 miles crossing some of the head branches of Guyandotte to 2 poplars and a buckeye tree on a ridge that divides two branches of Guyandott S. 83 W. 22¾ miles crossing several branches of Guyandott S. 8 W. 23½ miles crossing several branches of Guyandott to the beginning excluding six thousand acres for prior claims within said bounds."

page 325.]

RICHARD BAILEY, *Pilot.*

JAS. TAYLOR, *A.S.W.*

ROBERT ADAMS, *S. W. C.*

JAMES KIRK, JAMES WALL, *Chainmen.*

JAMES WORKMAN, *Marker.*

MAPS
TOO
LARGE
FOR
FILMING

County of Wythe:—

I, J. M. Gibboney Surveyor of Wythe County hereby certify that the annexed plat and certificate of survey is a true copy from the records in my office.

page 326.] SEE MAP.

Given under my hand this 20th day of July 1895.

page 327.] J. M. GIBBONEY, *S. W. C.*

"HARMAN SURVEY" OF MORRIS GRANT.

Henry B. Harmon's Report:—1847.

In accordance with the agreement entered into between Louis Chitti, Esq., and the undersigned, Henry B. Harman, of Tazewell County, Virginia, I proceed to re-survey a tract of land called 500,000 acres patented to Wilson C. Nicholas, which I find from actual measurement, following the natural calls of the patent to contain only one hundred and eleven thousand acres, as follows: To find the beginning corner of said survey of 500,000 acres; I commenced on a line of a survey of 320,000 acres, on which this survey binds at the mouth of little war creek and with said line N. 33, E. 1875 poles up the right hand fork of said war creek to its source, and across the dividing ridge between Sand and Guyandotte rivers, and along the spurrs thereof to two poplars and 2 beeches, which I marked, not finding the old corner. This line runs well varying only 45 poles from the calls of the patent. Thence I run north 1360 poles crossing Laurel or Caney Creek and the ridge between said creeks and Huff's Creek, and crossing the later to near Guyandotte and near a small branch. This last is also a line of a survey of 480,000 acres. I find this line is too short but from the calls of the patent I was compelled to stop at Guyandotte. Thence I returned to the mouth of Little War Creek and run South 33, West 3175 poles crossing Sandy River and crossing Panther Creek three miles and sixty poles from the mouth of

war creek and the head waters of Panther Creek to four white oaks there are yet standing on the northwest bank of said creek just below a small branch and about four miles from the head; here I left the calls of the 320,000 acre survey and with the page 328.] calls of the patent for the 500,000 acres; west 2605 poles crossing several branches of said creek to a station on Ray's fork of Knox Creek about 80 poles above William Estep's house and near home creek; from this I ran various courses for the mouth of Gilbert's Creek. The true line runs in N. 35, E. 6650 crossing Knox Creek at six miles, crossing Sandy River at 13 at the mouth of Turkey Creek and up the right hand fork and crossing a dividing ridge between Sandy and Guyandotte Rivers to the mouth of Gilbert's Creek. The timber is all dead and gone, but I am told there are persons living who have seen these trees standing. From this M. Buffington run north 10, E. 4450 poles crossing Guyandotte several times and several small creeks to a poplar, which he marked "T. B. 1846." Thence by protraction S. 6, E. 4180 poles crossing Guyandott river to the point on the plat marked "A" concluded March 25th 1847. This land lies in latitude North 37° and 37° 30′ and longitude between 4 deg. 30″ and 5 deg. west from Washington City.

The land in this survey is very rough indeed; it is almost one bed of mountains. The soil is generally rich. The climate salubrious. Corn and oats, is grain principally raised at this time through what and rye and would grow well on the higher portions. Potatoes, parsnips, turnips, beans and etc. grow well. Peaches do well; hemp, tobacco and the grape, if properly cultivated, could be raised in abundance. Some cotton is also raised here. This land is well timbered and tolerably well watered. Stone coal abounds in rich abundance wherever it is sought for. There is a vein near the beginning corner of this survey which is said to present a surface of about 200 yards. The depth is not known never having been much worked. The coal is of the best quality. There is I understand some appearance of iron at or near the mouth of little

war creek. This county is finely adapted to the raising of hogs, cattle and sheep, feeding as they do all the year page 329.] without shelter.

Navigation: Guyandotte River navigable for canoes to the mouth of Gilbert's Creek which is said to be about 100 miles and if clear of some obstructions, such as rocks and drifts, might be navigated with small boats nine months of the year. Sandy River is likewise navigable for canoes even through the survey but it presents some obstructions which it would not be however difficult to remove, if there were a sufficiency of trade to justify the enterprise. I am told there are no falls in either of these rivers. At the mouth of Gilbert's Creek on the Guyandotte River, and at the mouth of Panther Creek on Sandy River are the best sites for towns or villages, that are to be found on the land, possessing advantages such as easiness of access to those points and the road passing through the country, which are possessed by no other site to the same degree. There is a road passing from Tazwell Court House down the dry fork of Sandy River to its mouth and across the dividing ridge between Sandy and Guyandott Rivers to the mouth of Gilbert Creek,—about 65 miles, thence to Logan about 20 miles, and also from Tazwell Court House to the mouth of Panther Creek about 50 miles distant, and from thence in different directions. The produce of the country is chiefly taken down the Sandy and Guyandotte Rivers to market. On Bull Creek, Panther and Long Pole Creeks are found places well adapted to the keeping of sheep in the survey are several mills principally of small and indifferent kinds. The water power for such purposes is good. On the survey are living some thirty *families* all of whom have made small improvements. About one half will hold the lands now settled by them by the law of limitation of this Commonwealth. The quantity so held will be about 900 acres or thereabout. Sandy River is the line between Tazewell

and Logan Counties, and no part of the survey lies in the State of Kentucky.

HENRY B. HARMAN, Tazwell Court House.

May the 7th, 1847. Va.

page 330.] State of West Virginia

) SS.

County of Kanawha

I, H. K. Black, Clerk of the Circuit Court of Kanawha County West Virginia, do hereby certify that the foregoing is a true and correct copy of the report of survey of Henry B. Harmon, the same being filed as an exhibit in the cause of E. and I Dumas versus D. Huc de Monsignon and others Josiah Randall versus Gustavus Dressler and others and E. LaCouture versus Josiah Randall and others pending in said Court—

Given under my hand and the seal of said Court this 30th day of August 1895

H. K. BLACK, *Clerk.*

CIRCUIT COURT, KANAWHA COUNTY, WEST VIRGINIA

State of West Virginia,

Kanawha County, to-wit:

I, F. A. Guthrie, sole judge of the Circuit Court in and for the County of Kanawha, in the State of West Virginia, do certify that H. K. Black, by whom the aforesaid record and certificate were made and given, and who in his own handwriting has thereunto subscribed his name and has thereto affixed the seal of the Circuit Court in and for the County of Kanawha, in the State of West Virginia, was at the time of so doing, and now is, Clerk of the said Circuit Court in and for said County, to all whose acts as such full faith and credit are due and given, and that the said record and certificate are in due form and made by the

page 331.] proper officer.

IN TESTIMONY WHEREOF, I have hereunto

set my hand this 30th day of August, in the year of our Lord one thousand eight hundred and ninety-five.

F. A. GUTHRIE.

State of West Virginia,
Kanawha County, to-wit:

I, H. K. Black, Clerk of the Circuit Court in and for the County of Kanawha, in the State of West Virginia, do hereby certify that Hon. F. A. Guthrie, by whom the foregoing certificate was made and given, and who, in his own proper handwriting has thereunto subscribed his name, was at the time of so doing, and now is, sole judge of the Circuit Court in and for the County of Kanawha, in the State of West Viriginia, duly commissioned and qualified, to all whose acts as such full faith and credit are due and given, as well in courts of adjudicature as elsewhere.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said Circuit Court this 30th day of August A. D. 1895.

H. K. BLACK,
Clerk.

CIRCUIT COURT, KANAWHA
COUNTY, WEST VIRGINIA.

Fee.....$3.00

ENTRY GODON CLOYD 7,800 ACRES.

page 332.]

Dec. 28th 1795.

Gorden Cloyd assignee of Austin Nicholas by virtue of a Land office Treasury Warrant No. 1567 issued the 26th of August 1795 enters 7,800 acres of land on the East side of Guyandott River Beginning at three sugar trees two sycamores and 4 beech, at the mouth of Peter Huffs Creek and corner of Austin Nicholas survey & extending upon the river the several courses thereof and building thereon 3496 poles to two sugar trees about 20 poles below the mouth of Little Creek and corner to Wilson C. Nichols

survey of 500,000 acres and with a line thereof N 10 3 2430 poles to Huffs Creek and joining said Austin Nichols survey and with a line thereof and down the several courses thereof and binding thereon to the Beginning & to exclude 500 acres for prior claims and to be certified accordingly.

Surveyed

Wythe County to wit:

I, W. H. Burch —Deputy surveyor of Wythe County do hereby certify that the above is a true copy from the records in my office.

Given under my hand the 22nd day of Jne 1895.

W. H. BUCH *Asst.*
for Jas. M. Gibboney S. W. C.
for Jas. M. Gibboney S .W. C.

page 333.] SEE MAP.

GORDON CLOYD 7800 ACRE SURVEY.

page 334.]

Surveyed for Gorden Cloyd 7,800 acres of Land by virtue of an entry made the 21st day of December 1795 on a Land office Treasury Warrant No. 1567 issued the 26th day of August 1795 to Austin Nicholas and by him assigned to said Gorden Cloyd, Lying in Wythe County on the East side of Guyandott River a branch of the Ohio. and bounded as follows. Beginning at three sugar trees two sycamores and a beech at the mouth of Peter Huffs Creek, thence up the several courses of the Guyandott and binding thereon 3496 poles to three sugar trees about 20 poles below the mouth of Kettle Creek and corner of Wilson C. Nicholas survey of 500,000 and with a line therein N. 10° E 2430 poles crossing some branches to a line of Austin Nicholas survey on the bank of Peter Huffs Creek, and down the several courses thereof and *begining* thereon with said Nicholas line to the beginning. An allowance of 500 acres is made in the calculation of the area of this plot for prior claims contained within the boundary of the survey'

W. TAYLOR, *Asst.*
Robert Adams S. W. C.

Compleated the 23rd Dec. 1795.

Wm. Farley &)
) *Chairmen.*
John White)
Variation 3° West.

County of Wythe to wit

I, W. H. Burch Deputy surveyor of Wythe County do hereby certify that the above is a true copy from the records in my office

Given under my hand this 22nd day of June 1895

W. H. Burch *Asst.*
for Jas. M. Gibboney S. W. C.

DEED—CHRISTIAN to STAFFORD

page 335.]

This Indenture Made this 5th day of April 1841 between James P. Christian And Anne his wife of the first part and John Stafford of the second part.

Witnesseth that the said *partys* of the first part for and in consideration of the sum of one dollars to them in hand paid at and before the ensealing and delivery of these presents the receipt whereof is hereby acknowledged hath granted bargained and *and* sold and do by these presents bargain, sell and convey unto the said parties of the second part his heirs and assigns forever a certain tract or parcel of land lying in Logan County, beginning at the upper end of Gorden Cloyd Survey. And running down the river to Harry's Mill Including all the land within said survey in these bounds supposed to contain Seventy-five acres more or less. To have and to hold the said land with its Appurtenances unto him the said John Stofford his heirs and assigns forever free from the claims of them the said *partys* of the first part And his heirs and assigns and against the claims of themselves and all other persons whatsoever, shall and will warrant and defend in witness

he has hereunto set his hand and seal the day and year aforesaid

JAMES P. CHRISTIAN (seal)

Jn Logan County Clerk's Office 5th April 1841

page 336.] this day came James P. Christian before me and ————————, this to be his act and deed And the same was admitted to record.

Teste:

EDWIN ROBERTSON *Clk.*

State of West Virginia

Logan County Court Clerk's Office to-wit:

I, S. S. Altizer, Clerk of the County Court of said County, hereby certify that the foregoing is a true copy from the record of said office.

Given under my hand and the seal of said Court this 2nd day of September 1895.

S. S. ALTIZER, *Clerk*

COUNTY COURT

LOGAN COUNTY

page 337.] WEST VIRGINIA

DEED—KENT TO CHRISTIAN.

THIS INDENTURE, Made and entered into this 30th day of January, in the year of our Lord, one thousand eight hundred and thirty eight, between James R. Kent, and Polly, his wife, and David K. Kent, and Elizabeth, his wife, of the County of Montgomery, and State of Virginia, of the first part, and James P. Christian of the Court of Logan, and State aforesaid, of the second part.

WITNESSETH: That the said James R. Kent and Polly, his wife and David F. Kent and Elizabeth, his wife, for and in consideration of one hundred and seventy five dollars, to them in hand paid by the said James P. Christian, on or before the sealing or delivering of these presents, the receipt whereof is hereby acknowleged, they have given, granted, bargained and sold, and by these presents doth give, grant and bargain and sell unto the said James P. Christian, a certain tract or parcel of land containing ——acres, be the same more or less, being part of a survey of 7,800 acres,

granted to Gordon Cloyd by letters patent, bearing date the 2nd, day of July, 1796. It being, lying and being in the County of Logan, on Guyandotte River, and adjoining a tract sold to Joseph Perry. Beginning at three sugar trees near the mouth of Jettle Creek, and with a line of the same 7,800 acre survey running N. 10 E. until it crosses the river, the last time that being a point or corner to the land sold to Joseph Perry, thence up the meanders of the river, so as to include all of the land in the limits of the said survey 7,800 acres in and above the line of the said Joseph Perry, except such land as is reserved in the grant aforesaid, to the beginning. To have and to hold the aforesaid tract or parcel of land with its tenemets, hereditaments and all and singular other the premises hereinbefore mentioned with every part
page 338.] and parcel thereof, *thur* and appurtances unto the said James P. Christian, his heirs and assigns forever. And the said James R. Kent and Polly, his wife, and David F. Kent and Elizabeth, his wife, do covenant and agree to and with *every* of them that the said tract or parcel of land with all and singular the premises before mentioned unto the said James P. Christian, his heirs and assigns free from the claim or claims of them, the said James R. Kent, and Polly, his wife, and David F. Kent and Elizabeth his wife, their heirs and assigns or either of them, shall will warrant and forever defend by these presents. And it further is covenented and agreed between the said James R. Kent and Polly, his wife, and David F. Kent, and Elizabeth his wife, and the said James P. Christian his heirs assigns, or either of them, should be evicted by due course of legal proceedings, from the said tract or parcel of land by any person, claiming or to claiming, or to claim by a title superior and adverse to title of James R. Kent, and Polly, his wife, and David F. Kent, Elizabeth, his wife, them or their heirs or assigns shall refuse and repay to the said James P. Christian, his heirs or assigns so evicted the sum of One Hundred and Seventy Five Dollars, or a *retable* proportion thereof, in case. In testimony whereof, the said James R. Kent, and Polly, his wife, and David F. Kent, and Elizabeth his wife,

have hereto set their hands and seals the day and year above mentioned.

JAMES R. KENT, (*Seal.*)
MARY F. KENT, (*Seal.*)
DAVID F. KENT, (*Seal.*)
ELIZABETH KENT, (*Seal.*)

Montgomery County, to-wit:

We, Henry Wysor, Jr., and Edwin Watson, Justices of said County, do hereby certify, that James R. Kent, and David F. Kent, parties to the annexed conveyance of real-estate, hath duly acknowleged to the Clerk of the County Court of Logan County in order that the said conveyance may be recorded. Given under our hands and seals this third day of January, 1838.

page 339.]

HY. WYSOR, JR.
E. WATSON.

Montgomery, Virginia, towit:

We, Henry Wysor, and Edwin Watson, Justices of said County, do hereunto certify that Mary and Elizabeth Kent, the wives of James R. and David F. Kent, and parties to the annexed deed of conveyance to James P. Christian personally appeared before us privily and apart from their husbands, and having the aforesaid fully to them, they, the said Mary and Elizabeth Kent, acknowledged the same to be their act and deed and declared they had willingly signed, sealed and delivered the same and that they wished not to retract it, and desires us to certify the said acknowledgment to the Clerk of the County Court of Logan, in order to be recorded. Given under our hands and seals, *thos* 30th day of January, 1838.

HY WYSOR (*J P*)
E. WATSON (*J P*)

IN LOGAN COUNTY CLERKS OFFICE, 9th October 1838. This deed being duly acknowledged and certified, is admitted to record.

Teste: EDWIN ROBERTSON, *Clerk.*

State of West Virginia,

LOGAN COUNTY COURT CLERKS OFFICE, to-wit:

I, S. S. Altizer, Clerk of the County Court of said County, hereby certify, that the foregoing is a true copy of a deed of record in said office from James R. Kent and wife, and David F. Kent and wife to James P. Christian, bearing date the 30th day of January, 1839.

Given under my hand and seal of said Court this 2nd day of August, 1895.

S. S. ALTIZER, *Clerk.*

CLERK OF LOGAN COUNTY COURT, WEST VIRGINIA.

page 340.] State of West Virginia,

Logan County, to-wit:

I, Simpson Ellis, President of the County Court in and for the County and State aforesaid, do hereby certify, that S. S. Altizer, whose name is signed to the foregoing certificate, was at the time of the signing thereof, and is now, Clerk of the County Court of Logan County, State of West Virginia, and as such is the custodian of all the records of the said Court, including the records of deeds, wills, etc., and that his signature thereto is genuine, and that his attestation thereto is in due form of law.

Given under my hand this the 6th day of August, 1895.

SIMPSON ELLIS,
President County Court.

State of West Virginia,

Logan County, to-wit:—

I, S. S. Altizer, Clerk of the County Court in and for the County and State aforesaid, do hereby certify that Simpson Ellis, whose name is signed to the foregoing certificate, was at the time he signed the same, and is now, President of the County Court in and for the County and State aforesaid, and that his signature thereto is genuine ,and that his *attestition* is in due form of law.

Given under my hand and the seal of said Court this the 6th day of August, 1895.

S. S. ALTIZER,
Clerk Logan County Court.

(COUNTY COURT)
(Logan County)
(West Virginia)

page 341.] SEE MAP.

page 342.] ALEX. WALCOTT 100000 ACRE SURVEY.

Alex Walcott 100,000 Acres
Russell
Rec'd 16" Nov. 1795
Gt. iss'd 20 Jany. 1/97

Surveyed August 4" 1795 for William Merritt one hundred thousand acres of land by virtue of two land Office Treasury Warrants viz: No. 696 dated the 13th day of December 1794 for 50,000 acres lying in Russell County on the South side of Sandy River and bounded as followeth to-wit: Beginning at three poplars and a sugar tree being a South West corner of a survey of 500,000 acres made for Wilson C. Nicholas, and with a line of the same, North 4000 poles crossing Knox Creek and several branches of Panther Creek and Bull Creek to a white Oak poplar & *beack* standing on the South Side of Sandy River and nearly opposite the mouth of Turkey Creek being a corner to another survey of 180,000 acres made *fro* John M. *Ketterd*, thence leaving their line, and running down the Sd river and binding thereon according to the several causes and meanders 7286 poles to an ash, buckeye, poplar and *buch* of Sycamores standing on the South bend of the Sd. river and at the Mouth of a small branch, thence S. 45° 3050 poles to a white oak. Thence S. 63° E 6620 poles to the beginning. To exclude 200 acres of a prior claim entered for James Madison, for which an allowance is made in the calculation of the plat.

FRENCH MASON *D. S.*
H. SMITH *S. R. C.*

Variation from degrees West
C. C. Abraham Davis
John Davis
Marker Comfort Branton

page 343.] (An accompanying paper)

Know all men by these presents that I William Merritt have bargained & sold & by these presents do bargain & sell unto Alexander Wolcott of Windsor in the state of Connecticut his heirs or assigns a tract or parcel of land containing 100,000 acres by survey made in my name in August 1795 lying in Russell County on Sandy River & including the mouths of Knox and Peters Creek for value received; and I do hereby transfer, assign & make over unto the said Alexander Walcott of Connecticut his heirs and assigns the *plott* and certificate of said survey and desire and impower the Register of the Land Office to issue the grant for the said lands to the said Alexander Wolcott his heirs or assigns for which this shall be his authority. As Witness my hand this first day of February One thousand seven hundred and ninety six.
Teste

WILLIAM MERRITT

James Hardrick
Henderson Meadows
(Endorsed)

To the Register of the Land Office in Virginia,
Sir,

Be pleased to deliver to M. Austin Nicholas the bearer of this, the grant in my name of the tract of land, described in the within assignment, and you will greatly oblige

in presence of
Joseph Wood
James Porter)

Your Obt. Servt.
ALEX WOLCOTT (S)

page 344.] Land Office, Richmond Virginia

I, hereby certify the foregoing to be a true copy taken from the records of this Office.

Given under my hand and seal of Office the 24" June 1895.

(LAND OFFICE VIRGINIA) S. P. EPES

Register of Land Office

ENTRY KETTERA 180,000 ACRES.

page 345.] 1795. February 3rd. John Kettera by virtue of nine land office Treasury warrants issued the 23rd day of Jan'y 1795 No. 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096 enters 180000 acres of land on Sandy & Guyandott Rivers and the waters thereof adjoining & below a survey made for Wilson Carry Nicholas of 500000 acres. Beginning at 3 poplars & Sugar tree by a small branch of Knox's Creek & corner of a survey of said Nicholas & to be bounded by the said survey on the east and South & to extend from the same North & West for quantity.

1795 March 3 John W. Kettera makes the following amendment to his entry of 180000 acres made the 3rd day of February 1795 on the waters of Sandy Twelvepole Guyandott Rivers. Beginning at 3 white oaks, & poplar by the bank of Sandy River on a line of a survey of 500000 acres made for Wilson Cary Nicholas & near the mouth of a small branch & runneth thence the different courses of the River and binding thereon to the mouth of the Blackberry creek thence N. 38 40, N. 12 W. 2630, 373 E. 1530, S. 43 E. 6270, S. 3840 to the Beginning.

over

I, James M. Gibboney Surveyor of Wythe County, Virginia do hereby certify that the annexed copy of an entry made for John W. Kettera of 180 000 acres and also the amendment made thereto are true copies from the records in my office.

Given under my hand this 12th day of Aug. 1899

JAMES M. GIBBONEY,

Surveyor of Wythe County, Virginia.

page 346.] SEE MAP.

page 447.] KETTERA 180,000 ACRE SURVEY
(Cancelled)

rveyed for John W. Kettera 180,000 acres of Land by virtue of . entry made the 3rd day of February 1795 *on* nine Land offi treasury warrants Issued 23rd day of January 1795, N. 10 , 1089, 1090, 1091, 1091, 1092, 1093, 1094, 1095, 1096. Lying n Wythe & Russell Counties the greater part thereof in the County of Wythe on Sandy Twelve poles & Guyandotte Rivers *and* the waters thereof and Bounded as followeth viz: Beginning at 3 white oaks & a poplar by the bank of Sandy River on a line of a survey of 500,000 acres made for Wilson Cary Nicholes and near the mouth of a small branch and runneth thence N. 66 W 2320 poles down and near s'd River mostly on the North side to 3 Sugar trees in a bottom below the mouth of Knox's Creek a branch of s d River N. 72 W. 1790 poles extending down the River on both sides thereof mostly on the North side to 2 walnut and 2 Sugar trees by a small, of the North East side of a River—N. 58 W 1 90 poles down & near the River to four sugar trees in a bottom a few poles below the mouth of Blackberry Creek a branch of s'd River and on the South side thereof N 3840 poles crossing the River & leaving the same crossing Mates Creek and *and* extending up and near said Creek leaving the same and crossing the dividing grounds between Sandy River & Pigeon Creek a large branch of said River crossing the last mentioned creek & leaving the same & crossing the dividing grounds between ndy & Twelvepole River crossing the head branches of said River to & White oaks & poplar near the mouth of a branch on the N. E. side of the River N. 12° W. 2630 poles crossing the dividing ridge between s'd River & Guyandott River crossing the North West fork of Island Creek and the main Creek a few poles below the first large fork of s'd creek crossing & leaving the same crossing several small branches to 5 white oaks by page 348.] a branch a few poles from the River on the south side thereof S. 73 E. 1530 poles up & near 'd River on both sides thereof to 4 white oaks near a small branch S. 43 E. 6270 poles leaving the river crossing several small

branches the head of the Horsepen Creek to 3 White Oaks & Sugar trees of a line of a survey of 500,000 acres made for Wilson Cary Nicholes South 3840 poles with s'd line crossing the dividing ridge between Guyandott & Sandy Rivers crossing Pigeon Creek Buffalo Creek and several small branches to the Beginning to exclude 4000 acres in said bounds for prior claims for which there is an allowance made in the calculation of the plot.

JAMES TAYLOR *Ass't*
ROBERT ADAMS *S. W. C.*

Completed 11th March 1795

County of Wythe

I, G. M. Gibboney, Surveyor of Wythe County hereby certify that the annexed plot & certificate of survey is a true copy from the records in my office.

Given under my hand this 20th day of July 1895.

G. W. GIBBONEY, *S. W. C.*

page 349.] *SEE MAP*

KETTERA 180000 ACRE SURVEY

page 350.] Surveyed for John W. Kettera 180000 acres of land by virtue of an entry made the 3rd day of February 1795 on nine land office treasury warrants issued the 23rd day of January 1795 No. 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095 & 1096 lying in Wythe County on Sandy Twelve pole & Guyandott River and the waters thereof and bounded as followeth viz:—Beginning at three white oaks and a poplar by the bank of Sandy river on a line of a survey of 500000 acres made for Wilson Cary Nichols & near the mouth of a branch & runneth thence down the river the different courses thereof & binding thereon to four Sugar trees in a bottom a few poles below the mouth of blackberry Creek a branch of said river N. 3340 poles leaving the river crossing [illegible]ates creek & extending up & near said creek leaving the same and crossing the dividing grounds between Sandy river & Pigeon Creek a large branch of said river crossing the last mentioned creek and leaving the same crossing the dividing grounds between the waters of Sandy River and Twelvepole river

MAPS

TOO

LARGE

FOR

FILMING

the head branches of said river to 2 white oaks & poplar near the mouth of a branch on the North each side of the river N. 12 W. 2630 poles crossing the dividing ridge between said river & Guyandott river crossing the north west fork of Island Creek & the Main Creek a few poles below the first large fork of said creek, crossing & leaving the same crossing several small branches to five white oaks by a branch a few poles from the river on the south side thereof S. 73 E. 1530 poles up & near said river on both sides thereof to four white oaks near a small branch South 43 E 62 70 poles leaving the river crossing several small branches head of Horse pen creek to 3 white oaks & Sugar tree on a line of a survey of 500000 acres made for said Nicholas, South 3840 poles with said *said* line crossing the dividing grounds be-

page 351.] tween Guyandott & Sandy rivers, crossing pigeon creek, Buffalo Creek & several small branches to the beginning.

To exclude 4000 acres in said bounds for prior claims for which there is an allowance made in the calculation of the platt

Completed the 11th day of March 1795.

WILLIAM HENSLAY)
&) *Sworn Chainmen*
VINCENT GRANT)
WILLIAM COX *Marker*

JAS. TAYLOR *Ass'l*
ROBERT ADAMS, *S. W. C.*

County of Wythe

I, James Gibboney, Surveyor of Wythe County do hereby certify that the annexed platt & certificate of survey of John K. Ketter[illegible] are true copies from the records in my office.

Given under my hand this 25 day of April 1895.

JAMES M. GIBBONY *S. W. C.*

page 352.] SEE MAP.

DAVID BOOTH 20000 ACRE SURVEY

David Booth 20,000 acres, Wythe Co. Re 10 Nov.

page 353.] 1795 Gt, iss. 27th June, 1796.

Surveyed for David Booth 20,000 acres of Land by virtue of an entry made the 20th of October 1795. on part of a Land Office Treasury Warrant for 60,000 acres issued the 22 day of August 1795. No 15 62 lying in Wythe County on Guyandotte River and the waters thereof and bounded as follows viz: Beginning at 3 Sugar trees at the mouth of Gilberts Creek (a corner of a Survey of 500,000 acres Made for Wilson Cary Nicholas and with a line of the same). S. 320 poles 3 white oaks and sugar tree (a corner to a survey of 180,000 acres made for John W. Kettera & with a line of the same) N. 43 W 6270 poles crossing several small water courses to 4 white oaks near a small branch, (leaving Kettera's Survey) & extending up the River the different courses thereof and binding thereon and binding on several surveys to the Beginning To exclude 3000 acres in said *bounde* for prior claims for which there is an allowance made in the calculation of the Plott. Plotted by a scale of 500 poles to an inch—Variation 3° West

WM. FARLEY) *Sworn*
JOHN WHITE) *Chainmen*
HENRY FARLEY, *Marker*

W. TAYLOR *Ass'l*
ROBERT ADAMS *S. W. C.*
Completed 28th October, 1795
Land Office Richmond, Va.

I hereby certify that the foregoing is a true copy from the records of this office. Witness my hand and seal of office this 16th day of August 1895

SYDNEY P. EPES, *Register Land Office.*

(LAND OFFICE, VIRGINIA)

page 354.] ENTRY OF TAYLOR 9260¼ ACRES.

1795 June. James Taylor by virtue of 3 land office Treasury

Warr'n No. 9446 Assee. of Allen & Read, Assee. of Aron Engram, assee, of John Rutherford, Assne. of Joseph Flood, Assnee, of Porternatus Cruwthfield No. 9451, assnee. of Allen & Read, Assnee of Aaron Engram, assnee. of John Rutherford, assnee. of Joseph Flood, asnee. of Fortun alies Crutchfield N 19867 assnee. of George Blens, asnee, Alexander Heed Jun amounting to 9260¼ acres and *enteres* the same upon the waters of Guyandotte River to adjoin an entry of Sam'l Mores. Entered in the Land Office of the Kanawha County of *Uperds* of 33,000 acres and running from his entry various corners for quantity & not to interfere with prior claims.

I, James A Gibbeony, Surveyor of Wythe County, Virginia, hereby certify that the above copy of an entry for 9260¼ acres of land made for James Taylor is a true copy from the records in my office.

Given under my hand this 12 August 1899.

JAMES M. GIBBONEY,
Surveyor of Wythe County, Virginia.

page 355.] SEE MAP.

page 356.] JAMES TAYLOR 9260¼ ACRE SURVEY.

Jas. Taylor 9260¼ Acres.
Wythe Co., Re'd 5th Octo 95
Gt iss'd 16 Sept. 1796

Surveyed for James Taylor 9260¼ acres of land by virtue of an entry made the 19th day of June 1795, on 3 Land Office Treasury Warrants No. 9446 and dated the 30th day of Nor'b 1781 assigned to him by John Allen & James Reed, No. 9451 and dated the 30th day of Nov'b 1781 assigned to him as above & No 19,867 & dated the 14th Octo 1783 assigned him by George Blain. Amounting in the whole to 9260¼ Acres. Lying in Wythe County on Guyandotte River & the waters thereof and bounded as followeth viz: Beginning at 5 white oaks by a branch few poles from Guyandotte River,

on the *Sourth* side thereof and corner a survey of 180,000 Acres made for John W. Kettera also a corner to a Survey of 35,000 acres made for Call McGrugar & runneth thence N 12° W. 85 pos. crossing the River and joining a Survey of 32,955½ acres made for Sam'l Moore, thence with lines of said survey down the River the different courses there of & binding there on to a buckeye Elm, Ash & Mulberry trees by the mouth of a branch nearly opposite a small Island N. 82° W 92 pos leaving said Moores Survey & crossing the River to 3 Sugar trees lynn, double lynn, Ash & 3 beech trees in a rich hollow on the North East side of a small branch, S. 81° W 1015 pos. to pointers, S. 1° W 1610 pos to 3 popla[illegible] & white oak a corner to a survey of 25,000 acres made for said McGregor and with a line of the same N 80 E 1590 *pols* to the beginning.

To exclude 2740 acres for prior claims for which there is an allowance made in the calculation of the plat for the same.

page 357.]

JAMES TAYLOR *asst.*
ROBT. PRESTON, *S. W. C.*

James Martin &)
(*S. C. B.*
David Lusk)

Sam'l Luck Marker. *Vacation* 3° West.
Platted by a scale of 200 poles to an inch.
Compleated the 12th day of August 1795.
Book 30 Page 469.

Land office Richmond, Va.

I hereby certify that the foregoing is a true copy from the Records of the office.

Witness my hand & seal of office this 28th day of December 1894.

W. R. GAINES,
Register Land Office.

(LAND OFFICE, VIRGINIA)

page 358.] GRANT OF 9260 1-4 ACRES TO JAMES TAYLOR.

*Robert Brooke, Esquire, Governor of the Commonwealth of Virginia*s

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING.

KNOW YE, That by virtue of three Land Office Treasury Warrants Nos. 9446, 9451 and 19,867 there is granted by the said Commonwealth unto James Taylor a certain tract or parcel of land, containing 9260 1-4 acres by survey bearing date the 12th day of August 1795; lying and being in the County of Wythe on Guyandotte River and the waters thereof and bounded as followeth to-wit: Beginning at 5 white oaks by a branch a few poles from Guyandotte River on the *Sourth* side thereof and corner to a survey of 180,000 acres made for John W. Kettera, also corner to a survey of 25,000 acres made for Call McGreagor and runneth thence N. 12° W. 85 poles crossing the river and joining a survey of 32955 1-2 acres made for Samuel Moore, thence with the line of said survey down the river the different courses thereof and ending thereon to a buckeye, elm, ash and mulberry trees by the mouth of a branch nearby opposite a small island, N. 82° W. 92 poles leaving said Moores' survey and crossing the river to 3 sugar trees, lynn, double lynn, ash and three beech trees in a rich hollow in the north-east side of a small branch, S. 81° W. 1015 poles to pointers S. 1° W. 160 poles to three poplars and white oak a corner to a survey of 25,000 acres made for said McGreagor, and with a line of the same N. 80° E. 1590 poles to the beginning, But it is always to be understood that the survey upon which this grant is founded includes 2740 acres (exclusive of the above quantity of 9260 1-4 acres which having a preference by law to the warrants and rights upon which this grant is founded, liberty is reserved that the same shall be firm and valid and may be carried into grant

page 359.] or grants and this grant shall be no bar in either law of equity to the confirmation of the title or titles to the same as before mentioned and reserved with its *appertences.*

TO HAVE AND TO HOLD the said tract or parcel of land, with its appurtenances, to the said James Taylor (except as before excepted) and his heirs forever,

IN WITNESS WHEREOF, The said Robert Brooke, Esquire Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said Commonwealth to be affixed at Richmond, on the 16th day of September, in the year of our Lord one thousand 796 and of the Commonwealth the 21st.

(*Seal.*) ROBERT BROOKE.

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the records of this office, Witness my hand and seal of office, this 31st day of August, 1895.

page 360.] SEE MAP.

S. P. EPES.

(VIRGINIA LAND OFFICE)

Register of the Land Office.

page 361.] SAMUEL MOORE 40162 1-2 ACRE SURVEY.

Surveyed for Samuel Moore 40162 1-2 acres of land by virtue of an entry made the 14th day of April 1795, on one land office Treasury warrant & dated the 31st day of March 1795 No. 1253 lying in Wythe County of Sandy & Twelvepole & the waters thereof and bounded as follows: (to-wit) Beginning at four sugar trees in a bottom a few poles below the mouth of Blackberry Creek a branch of Big Sandy River, & a corner to a survey of 180,000 acres made for John W. Kettera & with the same North 3840 poles leaving the river crossing Mates Creek, & extending up & near the same leaving it & crossing the dividing grounds between Sandy River, & Pigeon or War Creek a large branch of said River crossing said creek, & leaving it, crossing the dividing grounds between Sandy River & Twelvepole River crossing the head branches of said river, to two white oaks & poplar near the mouth of a branch on the North East side of the river North 83 West 2150 poles crossing Twelvepole & its branches

MAPS

TOO

LARGE

FOR

FILMING

to three white oaks & black oak on the side of a hill South 1 West 2935 poles crossing the waters of Twelvepole river & Pigeon or War Creek to pointers S 63 East 2450 poles crossing several small waters courses to the beginning and to exclude to 108 acres for prior claims for which an allowance is made in the calculation of the plot.

Plotted by a scale of 500 poles to an inch.

James Martin,
&
Davis Lusk, Samuel Luck, Marker
Sworn Chain Bearers.
Variation 3 degrees west.

Completed the 12th day of August, 1795.

JAS. TAYLOR, *Ass't.*
ROBERT ADAMS, *S. W. C.*

page 362.] County of Wythe,

I, James M. Gibboney Surveyor of Wythe County do hereby certify that the above is a true copy of the map & certificate of survey from the records in my office.

Given under my hand this 19th day of September, 1895.

JAMES M. GIBBONEY, *S. W. C.*

page 363.] SEE MAP.

page 364.] CALL MCGREAGOR 25000 ACRE SURVEY.

Call McGregor, 25,000 acres Wythe Co.
Re'd 16 Nov. 1795 Gt iss'd 25 May

Surveyed for Call McGreegor 25,000 acres of land by virtue of an entry made the 12th day of May 1795, on a Land Office Treasury *Wattant* Dated the 5th day of March 1794, No.1211 lying in Wythe County on twelve pole and Guyandotte Rivers and the waters thereof and bounded as follows Viz:—Beginning at two white oaks and poplar near the mouth of a branch on the North East Side of twelve pole River and a corner to a survey of 180000 acres made for John W. Kettera and corner to a

survey of 4016 1/2 acres made for Samuel Moore and with a line of the former N. 12° W. 2630 poles crossing the dividing grounds between said River and Guyandott River crossing the West fork of Island Creek crossing the main creek not far below the first large fork crossing several branches to five white oaks by a branches a few poles from Guyandotte on the South side thereof, and corner of said Kettera's Survey also a corner to a survey of 9260 1/4 acres made for James Taylor and with a line of the latter S 80 W 1590 poles to three poplars and white oak. S 1° W. 2075 poles crossing twelve poles and several small branches to three white oaks and black oak on the side of a hill corner to said Moores, Survey of 40, 16 1/22 acres, S 83° E. 2150 poles with said Moores' line to the Beginning. And to exclude 200 acres for prior claims for which there is an allowance made in the calculation of the Plot.

JAMES TAYLOR, *Ass't.*
ROBERT ADAMS, *S. W. C.*

JAMES MARTIN &
)*Sworn chain bearers.*
DAVID LUSK
SAM'L LUSK, *Marker.*

Complcated the 11th day of August 1795.

page 365.] Land Office Richmond, Va.

I hereby certify that the foregoing is a true copy from the Records of this office. Witness my hand and seal of office this 13th day of September, 1895.

S. T. EPES,
Register Land Office.

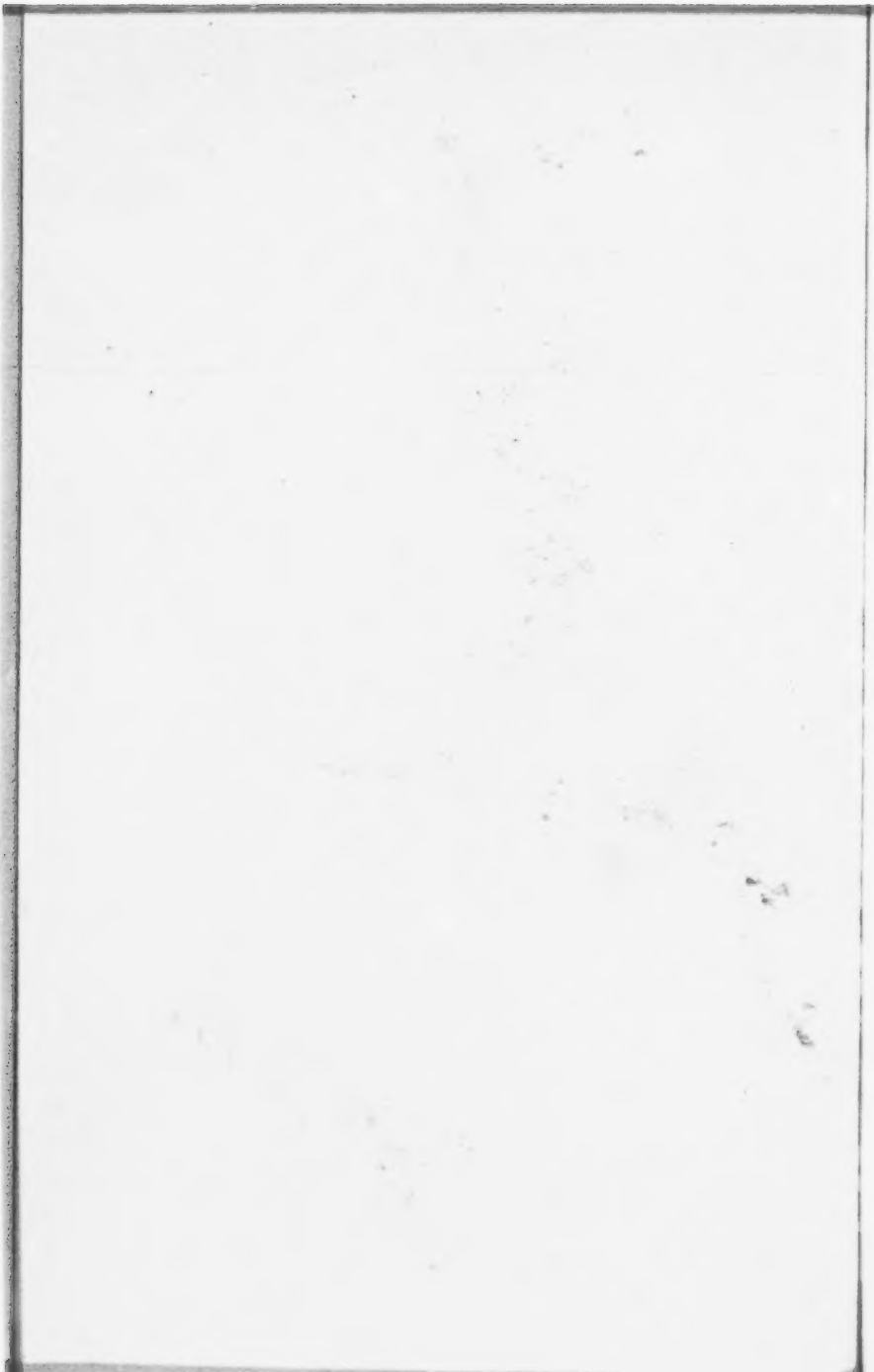
(LAND OFFICE, VIRGINIA)

page 366.] SEE MAP.

page 367.] SAMUEL MOORE 32,955½ ACRE SURVEY.

Sam'l Moore. 32955½ acres, Kanawha County Red. 3rd March 1796 Grant iss'd 16th Sept. 1796

Surveyed for Samuel Moore 32955½ acres of land by virtue of



an entry made the 12th day of May, 1795 on three Land Office Treasury Warrants, viz: one of 28000 acres dated the 28th of April 1795 No. 1319. Issued in the name of William Moore, Major Dowel and John Mathews and by them assigned to Samuel Moore and one of 955½ acres dated the 28th of January 1795 No. 1123 issued in the name of Major Dowel and by him assigned to Samuel Moore and one of 4000 acres dated the 31st of March 1795 No. 1254 issued in the name of Major Dowel and by him assigned to said Moore, Lying in Kanawha County on Guyandotte River and the waters thereof and bounded as follows viz: Beginning at two ash trees, Beech and Buckeye on the bank of Guyandott river and at the lower end of a bottom Eighteen poles below the mouth of a branch opposite the upped end of an island and a corner to a survey of 142000 acres made for Austin Nicholas and returned to the office of Montgomery County extending down in the river the different courses thereof and binding thereon 2672 poles to a Buckeye, ash, Elm and Mulberry tree at the upper end of a small island on the bank of the river, thence leaving the river and extending up Cub Creek the different courses thereof and building thereon 500 poles to a poplar, beech and white oak near said creek by a large rock North thirty-one degrees East nine hundred and sixty poles crossing several branches to a white oak North Eighty-six degrees East two thousand six hundred and seventy poles to pointers on a line of said Nicholas's survey and with the same South Forty degrees West four thousand two hundred and fifty poles crossing several branches to the Beginning.

page 368.]

To exclude 2390 acres for Prior Claims for which there is an allowance made in the Calculation of the plot.

August 18th 1795.

DAVID LUSK &
JAMES MARLEN
Sworn Chainmen.
REUBEN SLAUGHTER *S. K. C.*
SAMUEL LUCK *axx man.*
Land Office Richmond Va.

I hereby certify that the foregoing is a true Copy from the Records of this office.

Witness my hand and seal of office this 17th day of August 1895.

SYDNEY P. EPES
Register Land Office

(LAND OFFICE, Virginia)

page 369.] MADISON 2000 ACRE GRANT WAR CREEK OF GUYANDOTTE.

Henry Lee, Esquire, Governor of the Commonwealth of Virginia:

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

Know Ye, That, by virtue of Land Office Treasury Warrant No. 7914 issued the 3rd day of November, 1781, there is granted by the said Commonwealth unto Susanna Smith Madison & Agatha Strather Madison Co Heiresses of William Strather Madison, deceased, a *certaon* Tract of Land, containing 2000 acres by survey bearing date the 6th day of December 1787 lying and being in the County of *Kanawa* formerly Montgomery on War Creek, a branch of Guyandotte *empting* in the same on the *Sourth* West side of the river about 15 miles above Mill Creek and bounded as followeth, to-wit. Beginning at three sugar trees standing on the lower side of the Creek about one hundred poles from the creek and about two miles from the mouth of the same, thence crossing the creek North 70° East 220 poles to two black oaks thence up the creek South 50° E 380 poles crossing a branch to two poplars South 200 poles to two white oaks in a flat South 15° West 270 poles to a sugar tree and black walnut on the side of a hill South 25° East 280 poles to two buckeyes on a branch thence crossing the creek S. 60° W. 240 poles to three poplars on a branch near a large rock. Thence down the creek North 29° W 350 poles to a buckeye and sugar tree North 14° W 720 poles to the Beginning with its appurtenances—

TO HAVE AND TO HOLD the said Tract or Parcel of Land, with its appurtenances, to the said Susanna Smith Madison and

Agatha S. Strother Madison and their heirs forever.

page 370.] IN WITNESS WHEREOF, That said Henry Lee, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lessor Seal of the said Commonwealth to be affixed at Richmond, on the 15th day of March in the year of our Lord one thousand 783 and of the Commonwealth 17th

HENRY LEE

(SEAL)

LAND OFFICE, RICHMOND, VA.

I hereby certify that the foregoing is a true copy from the records of this office. Witness my hand and seal of office this 20th day of August, 1895.

SYDNEY S. EPES
Register of the Land Office

(LAND OFFICE. VIRGINIA)

page 371.] SEE MAP.

page 372.] JOHN STREET 582 ACRE SURVEY. WAR CREEK OF GUYANDOTTE.

Book C. Page 101

Surveyed for John Street 582 acres of land by virtue of part of two treasury Warrants No. 14906 & 16522 also by virtue of five other treasury warrants No 22610, 22611, 22612, 22619, & 22618 dated 24 Dec. 1783 lying on War Creek emtying into Guyandotte river about 15 miles above Mill Creek on the *SoWt* side. Beginning (joining & above a survey of 2000 acres made Decr. 6 1787 for the estate of William Madison Dec'd at 2 Beeches on a branch a corner to said survey standing on the No. Et side of the Creek, thence crossing the same with a line of s'd survey S. 60 W. 240 to 3 Poplars on a branch, thence up the Creek S. 50 E 160 to 3 Buckeyes, South 200 to an Ash & Linn S. 30 E 300

to two walnuts N. 50 East crossing the Creek 80 to a Mulberry & beech thence down the creek N 13 W. 640 to the beginning.

JAMES HINES, *Ass't*
J. PRESTON *S. M. C.*

ARCHIE PRICE
JNO. BLANKENSHIP

May 13 1788 Plat delivered

I, W. F. Wall, Surveyor of Montgomery County in the State of Virginia do certify that the above is a true copy of a plat & survey as recorded in Book C. at page 101 of the Surveyors office of said County.

Given under my hand this 21st day of August 1899

W. F. WALL *S. M. C.*

page 373.] SEE MAP.

page 374.] JAMES HINES 1250 ACRE SURVEY. WAR CREEK OF GUYANDOTTE.

Book C. Page 202. Surveyed for Thomas Huff 1250 Acres of land by virtue of an entry on a land warrant No. 14260 & dated the 14th of Sept. 1782 assee. of James Hines Assee. of William Ward lying Montgomery County on War Creek a branch of Sandy River joining and above a survey of 3000 acres made for the estate of William Madison Dec'd. Beginning with a corner of the same at a beech & chestnut, thence with a line thereof East 500 poles crossing the Creek to 2 black oaks on a ridge, S. 80 E. 400 up the creek to a Walnut & ash, S. 36 W. 465 to 2 Black oaks on a drain thence N. 53 W. 750 to the beginning.

JAMES HEINER *Ass't*
J. PRESTON *S. M. C.*

Mrch 10th 1789

Plott. delivered

I. W. F. Wall Surveyor of Montgomery County in the State of Virginia do certify that the above is a true copy of Plat & Survey as recorded in Book C at age 202 of the surveyors office of said County.

Given under my hand this 21st day of August 1899
W. F. WALL *S. M. C.*

page 375.] SEE MAP.

page 376.] THOMAS & JOHN SATCHELL 376 ACRE SURVEY WAR CREEK OF *GUYANDOOTE.*

Book C. Page 97

Surveyed for Edmond Thomas and John Satchell.

376 acres of Land by virtue of an entry on part of a treasury Warrant No. 11738 dated 19th April 1782 lying in Montgomery County on War Creek a branch of Guyandotte. Beginning at a Mulberry & beech a corner to a survey of 582 acres made for John Street. Thence East crossing the Creek 200 pos. to a walnut & Sugar tree thence up the creek S. 40 E. 350 to a poplar & black oak A. 50 W. 142 to 3 white oaks N. 45 W. 483 pos. to the beginning.

ARCHIE PRICE
JOHN BLANKENSHIP
Chainmen

JAMES HINES *Ass't*
J. PRESTON

May 23 1788 Platt delivered to Edmond Thomas May 1778 fee pa 1-11-3

I, W. F. Wall, Surveyor of Montgomery County & State of Virginia do certify that the above is a true copy of Plat & Survey. as recorded in Book C at page 97 of the Surveyor's office of said County.

Given under my hand this 21st day of August 1899.
W. F. WALL *S. M. C.*

page 377.] SEE MAP.

TORN PAGE

page 378.] MADISON & LEWIS 2000 ACRE SURVEY WAR CREEK OF GUYANDOTTE.

No 6.

Book D. Page 387.

Surveyed for Thomas Madison & Andrew Lewis, Surviving Adms. of the estate or William Madison dec'd 2000 acres of Land by virtue of an entry made the 12th day of November 1781 in the name of s'd Madison on a land office Treasury Warrant for 2000 acres No. 7914 and dated the 3d day of November 1781, Ass'd to him by James Madison. Lying in Montgomery County on War Creek, a branch of Guyandotte *empting* into the same on the So W side thereof, about fifteen miles above Mill Creek. Beginning at 3 Sugar trees standing on the lower side of the Creek about 100 poles from the Creek, & about 2 miles from the mouth of the same, thence crossing the creek. N. 70 E. 220 poles to 2 Black Oaks, thence up the Creek S. 50 E 380 poles crossing a branch to 2 Poplars. South 200 po. to 2 White oaks on a *flatt* S. 15 W. 270 to a Sugar tree & a black Walnut on the side of a hill. S. 25 E 280 po. to 2 Buckeyes on a branch, thence crossing the creek S. 60 W. 240 to 3 Poplars on a branch near a large rock, thence down the creek N. 29 W. 350 po. to a buckeye & sugar tree N. 14 W. 720 po. to the beginning.

JAMES HINES *Ass't*
J. PRESTON *S. M. C.*

Dec. 16 1787

I, W. F. Wall, Surveyor of Montgomery County, in the State of Virginia, do certify that the above is a true copy of a Plat & Survey, as recorded in Book D. at page 387 of the Surveyors. office of said County.

Given under my hand this 21st day of August 1899

W. F. WALL *S. M. C.*

page 379.] SURVEY OF THOMAS & JOHN SATCHETT 376 ACRES ON WAR CREEK OF GUYANDOTTE.

Surveyed for Edmond Thomas and John Satchett 376 acres of

land by virtue of an entry on part of a treasury warrant No 11783 dated 19th April 1782 lying in Montgomery County on War creek a branch of Guyandotte

Beginning at a Mulberry & beech a corner to a survey of 582 *acress* made for John Street thence East crossing the creek 200 pos to a walnut & Sugar tree thence up the creek S. 40 E 350 to a poplar & black oak S 50 W142 to 3 white oaks N X 4 W 483 pos to the beginning ☞

JAMES HINES *Asst*
J PRESTON

ARCHER PRICE &
JOHN BLANKENSHIP *Chairmen*

May 23d 1788
Plat delivered to Edmond Thomas
May 1788 fee pd 1-11. 3

I certify that the above is a true copy of a platt & survey recorded in the surveyor's office of Montgomery County Va in book C—page 97—

Test

W. J. HALL
Surveyor M. Co.

Copied May 1895
Fee $1.00

On the margin where the X and hand pointing to it is the words: "X I think it is intended to be N 41 W 483.
☞

page 380.] SEE MAP.

page 381.] MADISON & LEWIS 3000 ACRES SURVEY, WAR CREEK OF SANDY.

Book D. Page 526

Surveyed for Thomas Madison & Andrew Lewis, 3000 acres of land as Admrs. to the estate of William S. Madison dec'd by virtue of 2 entries made one on the the 12th day of November

1781 on a land office treasury warr't for 1000 acres No. 7922 and dated the 3 day of November 1781 ass'd to him by James Madison, the other made the 15th day of Dec'd 1781 on a land office treasury War't for 10000 acres No. 7846 & dated the 2nd of November 1781, Lying in Montgomery County on War Creek a branch of Sandy river *empting* into the same about 45 miles from the mouth, Beginning on the No Et. side of the river about half a mile below the mouth of s'd creek at a walnut, cherry & 2 beeches on the bank, thence up the river, S 80 S. 15 E. 60 S' 20 E. crossing the Creek 100 poles, South 130 to a sugar tree & Linn on the bank, thence leaving the river & running up the creek S 40 E. 400 to 2 sugar trees on the side of a hill, East along the hill side 200 poles to a poplar & beech near a clift of rocks standing to the South, S. 30 E. 300 to a beech & chestnut in a hollow, E. 500 poles crossing the Creek to 2 Black oaks on the top of a ridge N. 270 poles along the ridge to 3 chestnuts & a linn thence N. 62 W. 1277 po. to the beginning.

JAMES HINES *Ass't*
J. PRESTON

Novr. 17th 1787

I, W. F. Wall, Surveyor of Montgomery *Company* in the State of Virginia, do certify that the above is a true copy of a Plat & Survey as recorded in Book D. at page 526 of the Surveyors office of said County.

Given under my hand this 21st day of August 1899.

W. F. WALL *S. M. C.*

page 382.] WM. DINGESS 50 ACRES SURVEY, ISLAND CREEK.

Surveyed for Wm. Dingess 50 acres of land by virtue of an entry made in Kanawha County the 18th day of January 1809 on part of a land office Treasury warrant for 300 acres N. 1776 in exchange of No 21889 lying in Cabell County on Guyandotte river joining the land of General Preston at the mouth of *Buffalow* Creek and bounded as follows to wit:—Beginning at a

hornbeam and ash on the bank of the river near the land of said Preston and thence and with the lines of the same S. 30 E 112 to 2 buckeye at the foot of a hill N. 65 W. 200 to a poplar, beech and buckeye on the river bank thence up the river and binding thereon at low water mark 126 poles to General Prestons land on the bank of the river, thence N. 60 W. 50 poles to a white oak and maple and on the bank of the river N. 32 E. 4 to a large white oak in stone N. 55 W. 200 poles to 2 beeches and a black oak S. 63 W. 30 crossing a pond to a *bouble* beech on the bank of the river, thence up the river and binding thereon at low water mark 228 poles up the river and crossing the river 50 poles to the beginning.

Oct. 8th 1810.

sined by WM. DINGESS, *Ass't*
WILLIAM BUFFINGTON, *S. C. C.*

Variation 3° E.

State of West Virginia.

Cabell County Court Clerk's Office.

I, F. F. McCullough, Clerk of the County Court of said County hereby certify the foregoing to be a true copy as appears from Surveyors Record No. 1 page 23, records of my office aforesaid.

page 383.] Given under my hand and the seal of said Court, at Huntington, West Va., this 24th day of October, 1895.

F. F. MCCULLOUGH, *Clerk C. C. C.*

(COUNTY COURT)
(CABELL COUNTY)
(WEST VIRGINIA)

page 384.] WM. DINGESS 100 ACRE SURVEY, ISLAND CREEK.

Surveyed for Wm. Dingess 100 acres of land by virtue of part of an entry made in Kanawha County Sept. 11th 1806, and renewed in Kanawha County January the 18th 1809, on part

of a land office Treasury Warrant for 500 acres No. 6126 *assinee* of *Nathen* Hart *assinee* of James Gooch lying in Cabell County on the middle fork of Island Creek and joining a survey of 300 acres made for John Breckenridge and bounded as follows viz:— Beginning at a beech on the Creek bank on a line of said survey and with said line S. 15 E. 26 to a poplar and gum S. 62 W 80 poles crossing the Creek to a large beech on the bank thence with the *meanders* thereof and binding thereon at low water mark 58 poles to 3 spruce pines in the bend of the Creek S. 57 W 40 crossing the Creek to a sugar S. 75 W. 34 crossing the Creek to a sourwood and sugar S. 26 W. 68 crossing the Creek to a large poplar and beech by a branch N. 81 W. 42 crossing the Creek to 2 sugars and a buckeys on the bank then up the Creek with the *diferent* courses thereof and binding thereon *al* low water mark 272 poles to 2 beeches and a maple on the bank thence leaving the Creek N. 2 E. 64 to a beech and bending poplar by a branch N. 47 E. 14 to 2 white oaks N. 87 E. 118 to a large white oak on a point No. 46 E. 284 poles to a large poplar N. 53 E. 96 to the beginning.

By Wm. Dingess, *Ass't*
W. Buffington, *S. C. C.*

Sept. 28th 1810.
Varuation 3° E.

page 385.] State of West Virginia,
Cabel County Clerk's Office.

I, F. F. McCullough, Clerk of the County Court of said County hereby certify the foregoing to be a true copy as appears from Surveyors Record No. 1 page 24 records of my office aforesaid.

Given under my hand and the seal of said Court, at Huntington, this 24 day of October, 1895.

F. F. McCullough
Clerk of Cabell County, West Va.

(COUNTY COURT)
(Cabell County)
(West Virginia)

page 386.] WM. DINGESS 160 ACRE SURVEY, ISLAND CREEK.

Surveyed for William Dingess 160 acres of land by virtue of an entry made in Kanawha County the 11th day of Sept. 1806, and renewed in Kanawha County, January the 18th 1809, on part of a land Office Treasury warrant for 500 acres Nos. 126 *assince* of *Nathen* Hart *assince* of James Gooch, lying in Cabel County on the main left hand fork of Island Creek and bounded as follows to-wit:

Beginning at a large black cherry tree corner of a survey of 300 acres made in the name of John Breckenridge and with a line of the same x. S. 65 W. 20 crossing the Creek to a *burch* and maple then leaving said land S. 46½ E. 145 crossing the Creek to a beech and *burch* by a pond S. 22 E. 190 poles crossing the Creek twice to a sycamore, maple and hornbeam on the bank, then with the different *mianders* thereof and binding thereon at a low water mark 126 poles to 2 beeches and a maple S. 59 E. 120 crossing the creek to a beech south 24 poles crossing the creek to a lynn and sycamore on the bank and with the *deferent mianders* at a low water mark 297 poles to 2 buckeyes and beech by a path N. 66 E. 73 to a large poplar and two walnuts S. 40 E. 88 to a sugar, buckeye and walnut, N. 63 E. 16 to a wawhoo and 2 hornbeams on the bank of the Creek then down and binding thereon at low water mark 190 poles and crossing the Creek to large sycamore and sugar on the bank S. 61 W. 66 to a walnut N. 41 W. 60 to a large white oak in narrows N. 6 W. 90 to a white oak N. 5. W. 47 to a beech N. 60 W. 118 to a large white oak N. 16 E 95 to three beeches N. 70 E. 10 to a white oak and dogwood N. 12 W. 64 to a large white oak and buckeye N. 30 W. 40 to 2 beeches N. 33 W. 66 to 2 beeches on a point N. 36 E 12 to a large poplar N. 37 E. 83 to 2 Spanish oaks then down the Creek and binding thereon 54 poles to a gum

page 387.] and maple and 2 beeches N. 30 W 32 to a large white oak N. 46 W. 12 poles to *thr* beginning.

October 15th 1810.
The plat signed by

WM. DINGESS, *Ass't*
WILLIAM BUFFINGTON, *S. C. C.*

Variation 3° E.

State of West Virginia,

Cabell County Court Clerk's Office.

I, F. F. McCollough, Clerk of the County Court of said County, hereby certify the foregoing to be a true copy as appears from Surveyors Record No. 1 20 records of my office aforesaid.

Given under my hand and the seal of said Court, at Huntington, West Va., this 24th day of October, 1895.

F. F. MCCOLLOUGH,
Clerk of Cabell County Court, West Va.

COUNTY COURT
Cabell County
West Virginia

page 388.] SEE MAP.

page 389.] JOHN PRESTON 317 ACRE SURVEY, BUFFALO CREEK.

Surveyed for John Preston 317 acres of Land by virtue of part of entry made the 23d day of August 1782 for 1000 acres on part of a land office treasury warrant No. 11403 issued the 13th of March 1782 Lying in Montgomery County on Buffalo Creek, waters of Guyandott a branch of the Ohio river & bounded as follows: Beginning at two beeches and a maple at the foot of a hill near the Creek one computed mile from the mouth, a corner of a survey of 100 acre made for said Preston thence N. 68 W 31 poles crossing the Creek to a hickory and Lynn sapling on a hill side & along the same N. 25 E. 20 crossing a branch to a beech and red oak on the bank, N. 44 E 205 to a beech, sugar tree and beech sapling at the foot of a hill N. 85 E 205 to a beech, spruce pine and hickory on a hill side near the creek N. 184 to two lynns and an ash sapling & sugar tree in a hollow N. 72 E 48 to a Spanish

oak and hickory sapling N. 47 E 82 crossing the creek and a fork thereof to two buckeys and a sugar tree sapling in the edge of a bottom S. 30 W 235 to a buckeye, sugar tree and dogwood sapling in a hollow, S. 65 1/2 W. 348 to a birch and beech sapling N. 76 W 18 poles to the beginning.

THOMAS CLOYD, *Ass't*
GORDON CLOYD, *Sur.*

Variation 3° East.

Oct. 29th 1798.

Platt delivered August 1799. G. C.

I, W. F. Wall surveyor of Montgomery County in the State of Virginia do certify that the above is a true copy of Plat & survey as recorded in Book E. at page 414 on the records of Montgomery County Surveyors Office.

Given under my hand the 30th day of August, 1899.

W. F. WALL, *S. M. C.*

page 390.] SEE MAP.

page 391.] WM. WARD 310 ACRE SURVEY, HUFF CREEK.

Surveyed fr William Ward of Botetourt 310 acres of land in Montgomery County on both sides of Guyandott River at the mouth of Peter Huffs Creek by virtue of a Land Office Treasury Warrant for 22500 Acres No. 15541 & dated 22 of April 1783 assigned by James Trotter who was assee. of Neil Alexander. Beginning at a *Sarsafrass*, Beech & Sugar tree on the bank of a branch on the west side of the River thence N. 57 E 54 down the branch to a *Hiccory*, Sugar *teee* & Beech, S. 10 E 54 crossing the branch to a walnut and two sugar trees on the bank of the river, and down the same, N. 30 E. 74 crossing the branch to three Black Oaks, E. 620 crossing the river to three sugar trees on the side of a hill, N. 20 W 72 to 2 Sycamores & a birch on the bank of Peter Huffs Creek W. 590 crossing said creek & the river to a tuple (?),—Poplar & Sugar tree on the western bank of the river

N. 10 W. 86 to a tuple poplars West 20 to three Buckeyes at the foot of a Mountain S 17 W 203 poles to the Beginning.

W. WARD, *D. S. M. C.*

JOHN PRESTON, *S. M. C.*

December 3d, 1783.

I, W. F. Wall surveyor of Montgomery County in the State of Virginia, do certify that the above plat & survey is a true copy of same as recorded in Book C. at page 63 of the records of the surveyors office of Montgomery Co. Va.

Given under my hand the 30th day of August 1899.

W. F. WALL, *S. M. C.*

page 392.] THOS. BUFFINGTON 75 ACRE SURVEY BELOW HUFF CREEK.

Surveyed for Thos. Buffington, Jun'r. 75 acres of land in Cabell County, on Guyandotte river by virtue of an entry made the 18th day of Nov'r. 1811 on part of a land office Treasury warrant for 4000 acres No. 7960 dated 16th of Nov'r. 1791, and bounded as follows to-wit:—Beginning at two buckeyes and two sugar trees at the upper end of narrows, on the west of Guyandotte 2 or three hundred poles below the mouth of Huffs Creek, thence S. 58 E. 74 poles to a spruce pine S. 78 E. 68 poles to a buckeye and sugar tree in the edge of the bottom on or near Prestons line N. 25 W. 54 poles to an ash, poplar and sycamore on the bank of Guyandotte, said to be a corner to John Preston, then crossing the River N. 62 W. 40 poles to a white oak and maple, just below the mouth of a small branch N. 40 W. 390 poles to a poplar, white oak and black oak S. 56 W. 18 poles to two chestnuts and a beech on the river bank S. 44 E. 40 poles to 2 elms and 2 sycamores at the mouth of a branch then up the river side S. 24 E. 48 poles S. 29 E. 26 poles S. 25 E. 52 poles S. 12 E. 22 poles S. 32 E. 20 poles to the lower end of an island S. 41 E. 50 poles to the head of said island 118 poles to 2 elms and 2 sycamores S. 47 E. 40 poles to the beginning.

WILLIAM BUFFINGTON, *S. C. C.*

Nov'r. 19th 1811.

Variation 4″ E.

page 393.] State of West Virginia,

Cabel County Court Clerk's Office.

I, F. F. McCullough, Clerk of the County Court of said County hereby certify the foregoing to be a true copy as appears from Surveyors Record No. 1 page 53 records of my office aforesaid.

Given under my hand and the seal of said Court at Huntington, W. Va., this 24th day of October, 1895.

F. F. McCollough,

Clerk of Cabel County Court, W. Va.

(COUNTY COURT)
(Cabell County)
(West Virginia)

page 394.] SEE MAP.

page 395.] FRANCIS PRESTON 900 ACRE SURVEY, CANE CREEK.

Book C. Page 267.

Surveyed for Francis Preston 900 acres by virtue of *of* an entry on a land office treasury warrant of 24687 acres No. 19203, lying in Montgomery County on Cane Creek a So Wt branch of *Gyandotte*, joining & above a survey made for Js. Hines of 2223 acres. Beg'g at two white oaks a corner to the same, thence crossing the Creek with a line thereof East 220 Poles to two Chestnuts thence up the Creek South 200 to 3 Beeches and a Black oak, S. 30 E 350 to two poplars, S 60 E crossing the Creek 310 poles to two ash trees, thence N. 19 1/2 E. 690 to the Beginning.

James Hines, *Dep. Suy.*
J. Preston, *S. M. C.*

Feby. 13" 1788.

I, W. F. Wall, surveyor of Montgomery County in the State of Virginia do certify that the above is a true copy of a Plat & survey as recorded in Book C at page 267 of the Surveyor's office of said County.

W. F. Wall, *S. M. C.*

page 396.] SEE MAP.

page 397.] JAMES HINES 2223 ACRE SURVEY, CANE CREEK.

Book D, Page 203.

Surveyed for James Hines 2223 acres of Land by virtue of an entry on part of a land warrant of 2472 acres No. 11158 dated the 1st of March 1782 assee. of Thomas & William Lewis, lying in Montgomery on Cane Creek a West branch of Guyandotte *empting* in the same about 3 miles above War creek. Beginning about 2 miles from the mouth of 3 buckeyes standing at the mouth of a drain on the upper side of the Creek, thence crossing the Creek S. 65 W 200 to 2 beeches, thence up the creek South 300 pls. to black oak & *hiccory.*

S. 10 E 250 to 3. Black oaks.

S. 20 E. 300 to a Poplar.

S. 280 to 2 White oaks

East crossing the Creek 220 to 2 chestnuts.

N. 20 E. Crossing a branch at its fork 400 pls. to a linn & ash N. 22 W 844 to the Beginning.

JAMES HINES, *Ass't*
J. PRESTON, *S. M. County.*

Feby. 8 1788.
Plott delivered to him by J. P.

I, W. F. Wall Surveyor of Montgomery County in the State of Virginia, do certify that the above is a true copy of a Plat & survey as recorded in Book D. at Page 203.

Given under my hand this 21st day of August, 1899.

W. F. WALL, *S. M. C.*

page 398.] SEE MAP.

page 399.] THOMAS & JOHN *SATCHELL* 1630 ACRE SURVEY MILL CREEK.

Book C. Page 97.

Surveyed for Edmund Thomas and John Satchell 1630 acres of land by virtue of an entry on part of an exchange treasury warrant of 7500 acres No. 362 dated 22 April 1788.

Lying in Montgomery County in the right hand fork of Mill Creek a west branch of Great Guyandott. Beginning at 3 sugar trees standing on the bank of sd fork about half a mile from the mouth and about two miles from the mouth of the main Creek, Thence crossing the Creek West 240 poles to a poplar & Dogwood, S 10 W 300 to a black oak & Iron wood, S. 30 W 280 to a Linn & Dogwood S 10 E. 300 to 2 Beecher, East crossing the Creek 324 to 3 sugar trees on the side of a hill, N. 5 E. 860 pos. to the Beginning.

JAMES HINES, *Ass't*
J. PRESTON, *S. M. C.*

John Blankenship)) Plotted and delivered to Edmond
Archee Price) C. Men) Thomas May 1788
May 17th 1788)) fee pa'd 2-9-7 1/2

I, W. F. Wall, Surveyor of Montgomery County in the State of Virginia do certify that the above is a true copy of a Plat & survey as recorded in Book C at Page 97 of the Surveyor office of Montgomery County.

Given under my hand and seal this 21st day of August 1899.

W. F. WALL, *S. M. C.*

page 400.] SEE MAP.

page 401.] THOMAS HUFF 24 ACRE SURVEY BELOW MILL CREEK.

Book C. Page 155.

Surveyed for Thomas Huff 24 acres of Land by virtue of an entry made on part of a Treasury of 2203 1/2 acres No. 11408. Dated March 13th, 1782 assigned to him by Wm. Preston Administrator for Wm. Madison dec'd. lying in Montgomery County on the West side of Guyandott River, a small distance below the mouth of Mill Creek, Beginning at a harpwood. Mulberry and ash at the foot of an hill, and running S. 45 E 14 to a black oak and white oak on the bank of the river then down the several courses of the same N. 62 E 48 poles N. 40 E 40 poles.....N. 23 E 56 poles to two ashes on the bank of the river N. 64 W 14

poles to a buckeye, sugar tree and elm at the foot of a Mountain S. 43 W. 133 poles to the beginning.

Feby. 12, 1783.

WM. WARD, *Ass't*

J. PRESTON, *S. M. C.*

I, W. F. Wall, Surveyor of Montgomery County in the State of Virginia do certify that the above is a true copy of a Plat & survey as recorded in Book C at page 155 of the Surveyors Office of said County.

Given under my hand and seal this 21st day of August 1899.

W. F. WALL, *S. M. C.*

page 402.] CONTRACT————READ TO ARMSTRONG.

THIS CONTRACT, made this Tenth day of June, 1891, between John R. Read, Trustee, of Philadelphia, of the first part, and D. W. Armstrong, of New York City, of the second part,

WHEREAS, John R. Read, is trustee for the Swan Creditors, appointed by a decree of the United States Circuit Court for the District of West Virginia, entered on the 29th day of June, 1886, in certain cases therein pending.

AND WHEREAS, said Read as such trustee claims to own 500,000 acres tract of land situate in Wyoming and other counties in the state of West Virginia, patented to Robert Morris, June 23rd, 1795;

NOW THEREFORE THIS AGREEMENT WITNESSETH,

First—John R. Read, trustee for the Swan Creditors as aforesaid in consideration of the sum of one dollar in hand paid the receipt of which is hereby acknowledged, agree to sell to D. W. Armstrong all his right title and interest as such trustee in and to the aforesaid 500,000 acre tract of land. This contract is for the purchase and sale of such interest only in said tract of land as is held by said trustee. It is recognized and understood that there are outstanding claims of title to this tract of land or part of it, but no such outstanding claim of title can be used to defeat or

delay the payment of the purchase price hereinafter provided for.

page 403.] *Second*—The purchase price to be paid for said tract of land by said Armstrong is $10,000, payable within sixty days from the execution of this contract. Said payments to bear interest at the rate of six per cent per annum from the date hereof.

Third—It is thought that there is any interlock between this 500.000 acre tract of land and another certain tract of land belonging to said Read, trustee, containing 100,000 acres, patented to William McCleary on January 21st, 1796. If, however, said two patents should interlock, said interlock in not intended to be and is not sold by this contract, but shall remain the property of said Read, trustee, this contract to be the contrary notwithstanding.

Fouth—It is understood that a certain contract for the sale of this tract of land was made by Robert E. Randall, the predecessor of said Read in the trust, with Messrs. C. F. Smith and R. J. Fougeray, dated August 18th, 1882, and that a part of this 500,000 acres has been heretofore conveyed by said Randall under said contract.

Fifth—Upon payment in full of the purchase money herein provided for, said Read, trustee, shall make and execute a deed conveying said 500,000 acre tract of land to said Armstrong, but said deed shall contain a covenant of special warranty only.

WITNESS the following signatures and seals the day and year first above written.

Signed, seal and delivered in the presence of:

DAVID W. ARMSTRONG, (SEAL).

JOHN R. READ, (L. S.) (SEAL), Trustee

DAVID G. BAIRD, *as to David W. Armstrong,*
Notary Public N. Y. Co. (318).
As to John R. Read, (Trustee).
J. S. CLARK.

page 404.] In consideration of the payment of John V. Le Moyne of the amounts specified in the within con-

tract to be paid by me, I hereby assign all my interest in the said contract to said LeMoyne and request and direct John R. Read, trustee, to make the conveyance named therein to said LeMoyne.

DAVID W. ARMSTRONG.

Witness

JAS. S. CLERK.

Objected to as incompetent and immaterial: it is not an original document but wholly a typewritten paper, signatures and all, and is not certified nor proved as a copy and does not purport to pass title.

H. C. KING *by Stiles, Atty.*

page 405.] PETITION OF REED, TRUSTEE, TO SELL MORRIS GRANT.

CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF W. VA.

Dumas vs. De Hue D' Monsignor et al.
Lacoutne vs. Randall et al *In Chancery.*
Randall vs. Dressler et al.

To the Honorable Judges of said Court:

The petition of John R. Read respectfully shows: That he has been duly appointed in the above entitled suits on behalf of the creditors as trustee of the estate of James Swan, and as such trustee for such creditors he represents to the Court that on the 23rd day of June, 1795 there was granted by the Commonwealth of Virginia to Robert Morris 500,000 acres of land described in said Grant as lying in the Counties of Wythe, and Russell, but now lying partly in the *Coutnes* of Wyoming and McDowell in the State of West Virginia the portion lying in said *in said* State being so far as can be ascertained about 80,000 acres. Said tract is more particularly described in said grant as lying on Sandy and Guyandotte rivers. "Beginning at two poplars and two Chestnut trees and

branch of Guyandotte river about six miles from the mouth of Little War Creek a branch of Sandy river and corner to a survey of Wilson Cary Nicholas of 480,000 acres and a survey of 320,000 acres made for said Nicholas and Jacob Kenny and with a line of the latter S. 33 degrees W. 6720 poles crossing a division ridge and down War Creek to its mouth crossing Sandy river at six miles crossing Panther creek at nine miles and crossing several ridges to four white oaks on the North West bank of Knox Creek; thence leaving said survey west 3840 poles crossing a

page 406.] creek and some of the branches thereof and along the spur of the ridge dividing the waters of said Creek and Peter's Creek, a branch of Sandy river to three poplars and a sugar tree by a small branch of Knox Creek, thence north 8,000 poles, crossing King Creek at about four miles Sandy river at twelve miles to the mouth of Turkey Creek and up said creek, and the North West fork of the same, crossing Buffalo and *Pidgon* Creek and the dividing ridge between Sandy and Guyandotte rivers, and Gilberts Creek twice, a branch of Guyandotte river to three sugar trees in a bottom of said river, and about twenty poles below the mouth of Gilbert's Creek thence N. 10 degrees E 4450 poles crossing Guyandotte river several branches and some ridges to pointers thence east 6620 poles crossing Guyandotte river and several branches thereof to three sugar trees and a buckeye by a small branch the same being the North West corner of a survey of said Nicholas of 480,000 acres, and thence with the same S. 6,800 poles crossing Huff's Creek and Cain's Creek to the beginning".

Your petitioner further shows that applications have been made to him for the purchase of the interest of the said estate of said Swan in said tract and he is advised that it would be for the interest of the creditors of said estate that the said tract be sold.

Your petitioner further shows that there is a suit pending in this Court at Charleston wherein your petitioner is plaintiff and the School Commissioner of Logan County and others are defendants for the purpose of setting aside certain sales made by such

Commissioner of lands lying within a tract of 100,000 acres granted by the Commonwealth of Virginia to Wm. McCrery on the 21 of January 1796 and by him conveyed *to* the 22d day of January 1796 to James Swan, and it is suggested that a portion of the said Morris tract laps upon said 100,000 acres. Your petitioner therefore prays for an order authorizing and directing him to sell upon such terms as this Court shall direct all

page 407.] said tract of 500,000 acres hereinbefore set out by the metes and bounds of the grant, except so much if any as may interlock with the said McClery grant of 100,000 acres.

JOHN R. READ, *Trustee, by*
E. L. BUTTRICK, *his Solicitor.*

(Endorsed)

U. S. CIRCUIT COURT

Dumas v. De Huc. D' Monsignon et als.
& 2 other cases.

Petition for leave to sell Morris tract of 500,000 acres & order.

Filed in Clerk's office
April 19th 1890.
L. B. DELLICKER, *Clerk.*
Re-filed July 9, 1890.
L. B. DELLICKER, *Clerk.*

page 408.] United States of American
District of West Virginia SS.

I, L. B. Dellicker, Clerk of the Circuit Court of the United States for the District of West Virginia, do hereby certify that the foregoing is a true copy of the petition on file in the case of Dumas vs. De Huc D'Monsignon, and two other cases as appears from the endorsements on said petition as herein above set forth.

In testimony whereof I have hereto set my hand and the seal of said Court at Charleston in said District this 29th day of

August A. D. 1899. and in the 124th year of the Independence of the United States of America.

L. B. DELLICKER, *Clerk.*

(CIRCUIT COURT,)
(UNITED STATES DISTRICT,)
(WEST VIRGINIA,)
(CHARLESTON WEST VA.)

Memoranda of Objections to certain evidence, page 409.] introduced by contesting defendants furnished to the Court by defendant King upon the argument of said objections, but not formally filed, is in the words and figures as follows, to-wit:

State of West Virginia

vs.

Henry C. King et als.

Objection of King to Evidence on Behalf of Contesting Defendants.

The defendant King insists and relies upon his objections taken to, and motions to strike out, documents and oral testimony, as follows:

(1) Survey of 9260½ acres for James Taylor,
" 25,000 " " Call McGregor,
" 40,162½ " " Samuel Moore,
" 180,000 " " John W. Kettera,
" 20,000 " " David Booth,
" 7,800 " " Gordon Cloyd,
" 32,955½ " " Samuel Moore,
" 100,000 " " Alexander Walcott,

All entries and grants for any of said tracts.

Withdrawn entry and survey of 480,000 acres for Nicholas. Because each of said documents is incompetent.

Only the first four surveys purport to have been made by James Taylor, who reported the survey of 500,000 acres, of which four only the survey for Kettera purports to be adjacent to the 500,000 acres, and it was abandoned and not carried into

grant; and no evidence was offered to establish the actual location on the ground of any of said surveys, independently of the location of the 500,000 acres, and the actual situation of them is not known.

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(2) All the entries, surveys and grants mentioned on pages 159-160 of Vol. 1, of the bound evidence.

Because the same are incompetent and immaterial.

None of said surveys was made by Taylor, no proof is offered of their particular location and they do not mention any natural objects mentioned in the 500,000 acre survey, except Guyandotte River and Sandy River, the names of which

page 410.] are not in dispute.

(3) The "Harman survey" of the 500,000 acre grant. Because it it incompetent.

(A) It is incompetent, if offered to prove the location of said grant or any line, corner or part of same, being hear-say and not being the declaration of the surveyor who made, or of any person connected with the making of, the original survey upon which the grant purports to be based.

(B) It is incompetent, if offered to show or effect an estoppel, it not being within the province or authority of a surveyor, by an erroneous survey or other act, to bar the owner of a grant from claiming the same according to its true boundaries; and it does not appear that the survey was adopted and ratified, but it does appear that it was repudiated, by the owner. And estoppel, if effectual, would affect only the right to assert title as against one having a right to plead it, and would not change the actual boundaries of the grant.

(4) "Petition of John R. Reed, trustee, for leave to sell," and title papers therewith connected, and the "patent map" bearing date Dec. 19, 1891, railroad map with the "Reynolds survey" thereon, and letter from Buttrick to Chilton. July 13th 1891.

Because these papers are incompetent and immaterial.

(A) None of them tends to prove any fact bearing upon the actual location of the Morris grant or of any line, corner or part thereof, nor testifies to any knoowledge upon any material point. The petition discloses merely a want of knowledge on the part of the trustee, and an apparent construction by him of the grant not in conformity with any contention in this case, and that cannot control or influence the real location. The "patent map" is not supported by any evidence as to its accuracy or the data from which it was compiled, and proves nothing. The railroad map represents only the "Reynolds survey" and is not the best proof of that survey, and is no better proof than that survey as to the actual location of the grant, and there is no evidence to show that the map is correct or that the Reynolds survey is correctly traced upon it. The Butterick letter states only an opinion predicated upon the hypothesis that the Reynolds survey represents the correct location of the grant, and in no way tends to prove that such survey or location is either right or wrong. None of said papers tends to establish the location of the Morris grant or any fact from which the true location thereof can be ascertained.

[page 411.]

Estoppel by subsequent conduct cannot prove or disprove where the lines of the grant were actually run, or, not being run, where the calls of the grant placed them.

The trustee had power to sell and convey the lands of the Swan estate, but not to bar the right of the estate to land belonging to it, by his opinions and beliefs.

Col. Butterick, whether as counsel for Reed or for the Swan estate or as agent for either (with powers and scope of agency not disclosed) could not bar and estop either Reed or the estate or the successors of either by his opinion upon the accuracy of the Reynolds location or upon any other matter or by his expression of such opinions or his deductions therefrom.

Reed, trustee, had contracted the land in question to Armstrong before the Butterick letter was written and before the "patent map" was dated, and had conveyed it before Butterick

traced the Reynolds survey on the Norfolk & Western Railroad map, and before the "patent map" was made,

page 412.] There is no allegation in the case that any one at the time of acquiring the adverse claims of title relied upon or knew of any of the alleged acts of the claimants of the Morris grant, and no evidence to that effect, except in the case of Briar Mountain Coal & Coke Company, and all the titles emanated before 1891, the date of the petition of Reed, the patent map and the Butterick letter.

(5) Objections to testimony of G. S. Stone, Vol. 1, page 44 45 and 46, for reasons there appearing.

(6) Objections and motions to strike out testimony of W. D. Sell, Vol. 1, page 59-62-63, for reasons there appearing.

(7) Objections to testimony of Frederick Trent, Vol. 1, page 69, for reasons there stated.

(8) Objections and motions to strike out testimony of R. P. Spratt, Vol. 1, pages 71, 72 and 73, for reasons there appearing.

(9) Objections to testimony of F. S. Stafford, Vol. 1, pages 78, 79, 80 and 84, for reasons there appearing.

(10) Objections to testimony of T. J. Matthews, Vol. 1, pages 85, 90, 91 and 95, for reasons there stated.

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(11) Objections to testimony of N. L. Reynolds, Vol. 1, page 108.

The testimony is immaterial; what his instructions were and for whom the work was done would not affect the significance of what he did or what he found or failed to find on the ground.

Objection, page 110.

The testimony is immaterial and incompetent. The reason for beginning at a certain point would not make that place the right one nor the wrong one. The testimony in-

page 413.] volves hearsay.

First objection, page 111.

The question is incompetent, because it requests the witness to make a finding and conclusion upon the evidence.

Second objection, page 111.

The testimony is incompetent; it is mere speculation upon a question not provable by "expert" opinion or other opinion of a witness.

(12) Objection to testimony of Alexander Trent, Vol. 1, pages 174, 175 and 176, and motion to strike out page 178.

The testimony is incompetent because it gives the alleged declaration of a person shown not to have had any connection with the grant in question or with any other grant calling for the same boundary, either as owner, surveyor or otherwise.

(13) Motion to strike out from testimony of Henry Blankenship, Vol. 1, page 446.

The testimony is incompetent for the reason last above given.

(14) Motion to strike out from testimony of Levi Blankenship, Vol. 1, page 453½.

The testimony is incompetent for the reason above given.

(15) Motion to strike out from testimony of J. W. Stafford, Vol. 2, page 229—top of page.

The evidence objected to is hearsay and from an unstated source.

(16) Motions to strike out the testimony, upon direct examination of

Allen J. Sheppard,	Vol.	1,	page	216
W. B. Mead,	"	"	"	219
Andrew Baker,	"	"	"	224
George Charles,	"	"	"	226
Moses Charles,	"	"	"	235
Hiram Lane,	"	"	"	239
Joshua Justus,	"	"	"	242
Andrew Justus,	"	"	"	248

Because the same is incompetent. The testimony
page 414.] was introduced for the purpose of contradicting the testimony of a witness for King upon an immaterial matter brought out for the first time by "contesting defendants" on cross-examination.

17. Deposition of Lybook etc., filed in court after the report.

Because it is incompetent and immaterial. The deposition or depositions was not or were not taken in this case, nor in any case to which King, or so far as appears, any party to this suit was a party or in any way privy, or in which the Morris grant was concerned. It is a matter between strangers to this case and entirely foreign to it, and was a purely private matter. What was done about the deposition even in the case in which it was taken we do not know.

HENRY C. KING
By Counsel.

MAYNARD F. STILES,
Sol.

page 415.] DOCUMENTARY EVIDENCE INTRODUCED BEFORE COMMISSIONER GRAHAM BY DEFENDANT HENRY C. KING AND RETURNED BY SAID COMMISSIONER WITH HIS REPORT.

page 416.] ENTRY OF 120,000 ACRE BY WILSON CARY NICHOLAS.

1794. Part of 500,000 Acres.
Oct. 10th.

Wilson Cary Nicholas Assee of Joseph Hybee Assee. of John Groves by virtue of ten Land Office treasury Warrants iss'd. the 28th day of Aug. 1794 N.° 652, 653, 654, 655, 658, 659, 643, 645, 647, 648, enters 120,000 acres of Land on Sandy Creek & the waters thereof joining & below a survey of sd Nicholas & Jacob Kenney's 320,000 acres to begin at two poplars & 2 chestnut trees a corner thereof & another survey of 480,000 acres of sd Nicholas & to be bounded by sd surveys on the East & South & to extend from the same North & West for quantity.

Wythe County, Virginia to-wit:

I, Jas. M. Gibboney, Surveyor of Wythe Co. hereby certify that the above entry is a true copy from the Records in my office—Given under my hand this 17th day of August, 1895.

JAS. M. GIBBONEY,
Surveyor of Wythe County, Virginia.

page 417.] ENTRY OF 380,000 ACRES BY WILSON CARY NICHOLAS.

(Part of 500,000 Acres)

1794 Oct. 13,

Wilson Cary Nicholas by virtue of a land office Treasury Warrant for 380,000 acres No. 619 & dated 18th Sept. 1794 enters the same adjoining his last entry of 120,000 acres of Sandy River to bind on the same on the North & to extend North & North West from the same for quantity & to be together with sd entry Laid off in one Survey to contain 500,000 acres

Virginia: Wythe County to-wit

I, James M. Gibboney Surveyor of Wythe County Virginia hereby certify that the above entry is a true copy of the records in my office.

Given under my hand this 17th day of August 1895.

JAS. M. GIBBONEY,
Surveyor of Wythe County, Virginia.

page 418.] AMENDED ENTERY of NICHOLAS 500,000 ACRES.

1794, Oct. 28th.

Wilson C. Nicholas makes *he* following amendment to his entries of the 10th. and 13th. instant—The said entries to be laid off in one survey to contain 500,000 acres, lying on Sandy and Guyandotte River & and the water thereof & to be specially bounded in the following manner, viz:

Beginning at 2 poplars & 2 chestnut trees on a branch of

Guyandotte River about six miles from the mouth of Little War creek, a branch of Sandy river, being a corner to a survey of said Nicholas of 480,000 acres and a survey of 320,000 acres made for said Nichols & Jacob Kenny & to extend with the latter S. 33 W. 6720 poles crossing Sandy river Panther creek to a corner of said survey, then leaving the same W. 3840 poles crossing Knox's creek and Peters Creeks waters, N. 8000 poles, crossing Knox creek, Sandy river, Turkey creek, Buffalo Creek, Pigeon creek & Gilberts creek, thence N. 10 E. 4450 poles crossing Guyandotte to the N. W. corner of said Nicholas survey of 480,000 acres, & with the same South 6800 poles to the beginning, which said entry when surveyed is to exclude 4000 acres of land for prior claims within said bounds & to be certified accordingly.

Wythe County, Virginia, SS:

I, James M. Gibboney, County Surveyor of said county do hereby certify that the foregoing is a true copy of an entry of 500,000 acres of land made by Wilson C. Nicholas, October 28th, 1794, as the same appears upon the records in my office.

Given under my hand this ..... day of May, 1902.

JAMES M. GIBBONEY
Surveyor of Wythe County, Virginia.

page 419.] SEE MAP.

page 420.] SURVEY OF NICHOLAS 500,00 ACRES.

Robt. Morris 500,000 acres.
Wythe & Russell. Rc. 22 Dec 1797
Caveated by iss. Sur, 7th May 1795
Gt. iss'd 17th June, 1795 Cavact dismissed 11th June 1795.

Surveyed for Wilson Cary Nicholas 500,000 acres of land by virtue of two entries viz: one made on the 10th day of October, the other the 13th day of October 1794 on eleven Land Office

Treasury Warrants amounting to 500,000 acres & numbers 652, 653, 654, 655, 658, 659, 643, 645, 647, 648, and issued 28th day of August 1784, to John Groves and by him assigned to Joseph Higbee and by him to said Nicholas and No. 619 issued the 18th day of September 1794 to said Nicholas, lying in the Counties of Wythe and Russell the greater part thereof in the former on Sandy and Guyandott Rivers and the waters thereof and bounded as follows viz: Beginning at two poplars and two chestnut trees on a branch of Guyandott River about Six miles from the mouth of Little War Creek a branch of Sandy River being a corner of a survey of said Nicholas of 480,000 acres and a Survey of 320,000 acres made for said Nicholas and Jacob Kenney and with a line of the latter S 33 W 6720 poles crossing a dividing ridge and down War Creek to the mouth crossing Sandy River at six miles crossing Panther Creek at nine miles and crossing several ridges to four white oaks on the North West bank of Knox Creek & thence leaving said Survey W. 3840 poles crossing said Creek and some of the branches thereof and along the spurs of the ridge dividing the waters of said Creek and Peters *Crrek* a branch of Sandy River to three poplars and a Sugar tree by a small branch of Knox's Creek, thence N 8000 poles crossing Knox Creek at about 4 miles, Sandy River at twelve miles at the mouth of Turkey Creek and up said Creek and the North West forks of the same crossing *Buffaloe* Creek Pigeon Creek and the dividing ridge between Sandy and *Gyandott* Rivers. and Gilberts Creek twice a branch of Guyandott to three Sugar trees in a bottom of said River and about 20 poles below the mouth of Gilberts Creek thence N 10° E 4450 poles crossing Gyandott River several small *brances* and some ridges to pointers thence E 6620 poles crossing Gyandott River and several branches thereof to three Sugar trees and a buckeye by a small branch of the same being the North West Corner of a survey of said Nicholas' of 480,000 acres and thence with the same S 6800 poles crossing Huff or Cain Creek to the beginning to exclude

page 421.]

4000 acres of Prior claims as expressed in the location of this survey. *Compleated* 28th day of October, 1794.

JAMES TAYLOR *A. S.*
ROB'T ADAMS, *S. W. C.*

Philadelphia, Decem.r 11th 1794. I do assign the within plat and certificate of survey unto the Hon'ble Robert Morris of the City of Phila & request that the Register of the Land office may issue the Grant to him.

WILSON CARY NICHOLAS *by*
JAMES BRAKINRIDGE JR. *his att. in fact for this Special purpose*
WILSON CARY NICHOLAS.

Witness
JAMES BROWN.

Land Office Richmond Va.

I hereby certify that the foregoing is a true copy from the records of this office. Witness my hand and seal of office this 27 day of September

SYDNEY P. EPES,
Register Land Office.

(VIRGINIA LAND OFFICE.)

page 422.] GRANT OF 500,000 TO ROBERT MORRIS.

Robert Brooke, Esquire, Governor of the Common Wealth of Virginia:

TO ALL WHOM THESE PRESENTS SHALL COME, GREETING:

Know Ye, That by virtue of 11 Land Office Treasury Warrants Nos. 653, 654, 655, 658, 659, 643, 645, 646, 648, issd 28th Augt. 1794 & No. 619 iss'd 18th Sept. 1794 there is granted by the said Commonwealth unto Rob't Morris assee Wilson, Cary Nicholas, a certain Tract or Parcel of Land, containing 500,000

acres by survey bearing date the 28th day of October 1794 lying & being in the Counties of Wythe & Russell, the greater part thereof being in the former on Sandy & Guyandotte Rivers & the waters thereof & is bounded as followeth to wit. Beginning at 2 Poplars & 2 chestnut trees on a branch of Guyandott R—— & above 6 miles from the mouth of Little War c'r a branch of Sandy R—— being a corner of a survey of s'd Nicholas of 480,000 a'cs & a survey of 320,000 a'cs made for s'd Nicholas & Jacob Kenney & with a line of the latter S. 33° W. 6720 po. crossing a dividing ridge & down War Creek to the mouth crossing Sandy R—— at 6 miles, crossing Panther Creek at 9 miles & crossing several ridge to 4 white oaks on the N. W. bank *if* Knox Creek, & thence leaving s'd survey W. 3840 po. crossing a creek & some of the branches thereof & along the *spurrs* of the Ridge dividing the waters of s'd creek & Peters c'r a branch of Sandy R—— to 3 Poplars & a sugar tree by a small branch of Knox c'r thence N 8000 po. crossing Knox c'r at about 4 miles, Sandy R—— at 12 miles to the mouth of Turkey Creek & up s'd creek & the N. W. forks of the same, crossing Buffalo creek, Pigeon c'r & the dividing ridge between Sandy & Guyandotte River & Gilberts c'r twice a branch of Guyandotte to 3 sugar trees in a bottom of s'd River & about 20 po below the mouth of Gilberts creek, thence N. 10° E. 4450 po. crossing Guyandotte R—— several small branches & some ridges to Pointers, thence E 6620 po. crossing Guyandott R—— & several branches thereof to 3 sugar trees & a buckeye by a small branch of same, being the N. W. corner of s'd Nicholas of 480,000 a'cs. thence with the same S. 6800 po. crossing Huffs or Cain c'r to the beginning. But it is always to be understood that the survey upon w'h this Grant is founded includes 4000 acres w'h having a perferance by law to the warrants rights upon w'h Ro. Morris' survey is founded liberty is reserved that the s'd 4000 a'cs shall be firm & valid & shall have same effect & may be carried into Grant or Grants & this Grant shall be no bar in either law or Equity to the confirmation of

page 423.]

the title or titles as before mentioned & reserved with its appurtenances.

TO HAVE AND TO HOLD the said tract or Parcel of Land, with its appurtenances, to the said Robert Morris and his heirs forever.

IN WITNESS WHEREOF, The said Rob't Brooke, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the Lesser Seal of the said Commonwealth to be affixed at Richmond on the 23rd day of June, in the year of our Lord one thousand 795. and of the Commonwealth the 19th.

ROBERT BROOKE,

(SEAL)

LAND OFFICE, RICHMOND, VA.

Book 31.
Page 613.

Acres 500,000.

page 424.] I hereby certify that the foregoing is a true copy from the records of this office. Witness my hand and seal office, this 8th day of May, 1891.

W. R. GAINER,
Register of the Land Office.

(LAND OFFICE VIRGINIA.)

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page 425.] Map.

SURVEY OF 320,000 FOR NICHOLAS AND KENNEY

page 426.] Surveyed for Wilson Cary Nicholas and Jacob Kenney 320,000 acres of land by virtue of two entries made the 7th and 27th days of March 1794 on ten Land Office Treasury Warrants viz: Nos. 228, 229, 230, 231, 232, 233, 234 & 235 issued the 27th day of January 1794 to Wilson Cary Nicholas and by him one half thereof ass'd to Jacob Kenney also No 371 & 372 issued to Robert Pollard and by him ass'd to

Willson Cary Nicholas and Jacob Kenney lying in Wythe and Russell Counties the greater part thereof in the County of Wythe, on both sides of Sandy Creek a branch of the Ohio and bounded as follows, viz: Beginning at five Chestnut trees on the top of ridge that divides the waters of the Tug fork of Sandy Creek from the waters of Gyandott at a place which is frequently used as a crossing place from the mouth of Browns Creek on Tug River to Indian Creek a branch of Guyandott and near the head of Browns Creek being a corner of a survey of Willson Cary Nichols and with a line thereof thence S. 35 W. 36¼ miles crossing several branches of Sandy Creek viz: Tug Fork the Clear fork, Bartlets, Sandy Creek & Bradshaw Creeks to the end of a ridge that divides the waters of Panthers Creek and Kox Creek two miles on the course S 52° E. from a low gap in the ridge that divides the waters of Main Sandy & the Louise fork of Sandy at an old encampment, thence N. 52° W. 11 miles along a ridge that divides the waters of Panther and Knox Creeks and leaving on the North West side the main dividing ridge and crossing some of the spurs of the same to two walnuts two Spanish oaks and a chestnut Oak on the top of the ridge that divides Panther and Knox Creeks, thence N. 30° W. 5½ miles leaving the ridge on the South West side and crossing between the head

page 427.] waters of Knox & Peters Creek & crossing Knox creek about four miles from the head to four white oaks in the North West bank of the same near the mouth of a small branch, thence 33° E. 21 miles crossing Panther Creek at 11½ miles and crossing Main Sandy Creek at 15 miles where Little War Creek empties into the same on the North East side and up said War Creek to the forks thereof and up the North East fork to the head, and along a ridge and crossing the same to two poplars and two chestnut trees on a branch of Guyandott six miles from the mouth of Little War Creek, and thence S. 25 E. 2¾ of a mile crossing said branch to a lynn and three chestnut trees in a low gap nearly opposite to the mouth of Tug River and about four computed miles from the same, thence N. 50° E. 12½ & 1-16 of a mile continuing on a ridge two miles and leaving it

on the South east and crossing the heads of several branches of Tug River to a double chestnut tree a black Oak and Sourwood tree on the top of said ridge and thence S 65° E. 10 miles along said ridge and crossing several small branches to the beginning excluding 880 acres in the above bounds for prior locations.

William Davies) Sworn
& (Chain
Adam Davies) Bearers.

James Taylor *Asst. S. W. C.*
Robert Adams *S. W. C.*

Solomon Strullon, Pilot) Done by a scale of four miles to
John Davies Marker an inch—*Compleated* the 1st day of April 1794.

Variation 2¼ West

I assign all my right title and interest to the within Survey of land to Wilson Cary Nicholas—Witness my hand this 2nd day of May, 1794.

Teste) Jacob Kenny
H. Martin)

page 428.] I assign all my right title and interest to the within Survey of Land to Robert Morris of Philadelphia in the state of Pennsylvania for value received. Witness my hand this 12th day of August 1794.

Teste Wilson Cary Nicholas
I Marshall

Land Office, Richmond Virginia

I certify the foregoing Plat, certificate of survey and assignments thereon are true copies from the record of this office.

Given under my hand and seal of office the 13th June, 1895

Sydney P. Epes
Register of Land Office.

page 429.] SEE MAP.

MAPS

TOO

LARGE

FOR

FILMING

SURVEY OF NICHOLAS 480,000 ACRES.

Surveyer for Wilson Nicholas 480,00 acres of land
page 430.] by virtue of an entry made the first day of September 1794 on twenty-six Land Office Treasury Warrants. Numbered 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, issued the 29th day of May 1795 to Robert Pollard and by him ass'd to said Nicholas & Numbered 522, 523, 524, 525, 526, 527, 528, 529 & 530 issued the 14" June 1794 to Hector Kennedy and by him assigned to said Nicholas lying and being in the County of Wythe on Tugg and Guyandotte River and the waters thereof and bounded as follows viz: Beginning at two poplars a walnut and sugar tree, in a bottom on the North side of the main fork of Tugg River a branch of Sandy River a corner of a survey of 500,000 acres of said Nicholas & one of 150,000 acres of David Pattersons and with a line of the latter S 53° W. 2560 poles crossing said River to three White Oaks by a branch of said river, thence leaving the same N. 25° W 880 poles to five white Oaks a corner to a survey of 300000 acres made for Wilson C. Nicholas and with the lines thereof N. 35° W. 1750 poles running two and a half miles to said River and down the same to five Chestnut trees and a double poplar on the Bank of the same a small distance below the mouth of Elk horn Creek N. 10° W. 1600 poles leaving the river and crossing a ridge between the same and Browns Creek, a branch of said River and extending along a spur of the dividing ridge to five chestnut trees, on the top of the same at the place *general* used for crossing from the mouth of Brown Creek on Tugg River to Indian Creek a branch of Guyandott, being a corner of another survey made for Wilson C. Nicholas and Jacob Kenney of 320,000 acres and with the lines of the same and leaving the former N. 65° W. 3200 poles along the said ridge some of the spurr thereof and
page 431.] crossing the same to a double chestnut tree, a black oak and Sourwood on the top thereof S. 50° W. 3910 poles along said ridge some distance and leaving the top of the same & crossing some of the spurr thereof, chiefly on South side and crossing some of the waters of Tug River to a Lynn & three

chestnut trees in a low gap of the same nearly opposite to the mouth of said River where it empties into Sandy River, it 25° W. 880 poles leaving said ridge and crossing some small branches of Guyandotte to two poplars and two chestnut trees near a branch of said River, thence leaving the lines of the said Survey N. 6800 poles crossing Laurel Creek and several branches of the same, the dividing ridge between said branch and Huff or Caney Creek and crossing the last mentioned Creek a small distance above the mouth to three sugar trees and a buckeye by a small branch of Guyandott River & thence N. 85° E 10,050 po. crossing Guyandott and several branches thereof to a line of a survey of 500,000 acres made for said Nicholas and with the same S. 9700 poles crossing Guyandott Branson's fork and Indian Creek to the beginning.
Compleated the 10th day of Septem. 1794.
19th October 1794

Ia Taylor *A. S. W. C.*
Robert Adam *S. W. C.*

I assign the within survey to Robert Morris Esquire for value received.

Teste)
Wm. Price)

Wilson Cary Nicholas

Land Office Richmond Va.

I certify the annexed survey and plat to be true copies from the records of this office. Given under my hand and seal of office the 12th day of June 1895.

(LAND OFFICE, VIRGINIA)

Syney P. Epes
Register of the Land Office.

SURVEY OF DAVID PATTERSON 40,000 ACRES.

page 432.] Surveyed for David Pattison 40,000 acres of Land by virtue of an entry made 13th day of October 1794 on a Land Office treasury Warrant for 40,000 acres No. 700 & issued the 12th day of September 1794 to sd Patterson, Lying & being in the County of Wythe on Bluestone & Tug Rivers & the waters thereof & bounded as follows viz, Beginning at 3 3 *chesnut* tree & a locust tree on the top of a Ridge that divides Abbs Valley & Laurel Creek & near a clift of Rocks being

a corner to another survey of sd Patterson of 150,000 acres thence leaving the same N. 55 E. 2880 poles along sd Ridge & some of the spurrs thereof mostly on the North side to two Gum trees & *Hiccory* near Bluestone River & on the South side thereof, thence N. 40 W. 260 poles crossing Laurel Creek at the mouth to a *hiccory* & White Oak on the North side thereof & a corner a survey of 500,000 acres made for Wilson Cary Nicholas & with the same N. 27° W 3840 poles crossing the head Branches of Elkhorn Creek & Bluestone River twice & some of the heads of the waters thereof to four white oaks on a Ridge & thence S 39° W. 480 poles to a poplar & maple at the mouth of the North & South forks of Elkhorn Creek a branch of Tug River corner to a survey of 150,000 acres of sd Patterson thence with same & leaving Wilson Cary Nicholas land S. 10° E. 880 poles Running up the south fork of Elkhorn Creek to three white oaks & poplar in a small bottom on the North East side of sd fork, thence S 10 W 2960 poles crossing said fork and the dividing Ridge between said fork & the North fork of Tug River & crossing said fork to two maples, a spanish oak & *hiccory* on a spurr of a ridge of said River thence S 34° E. 380 poles to three white oaks a maple & poplar on a ridge S. 15° W. 280 po to three Red Oaks S. 20° E. 534 poles crossing the dividing Ridge between Tug River & Laurel Creek a branch of Bluestone & Laurel Creek to the Beginning to exclude 2650 acres for prior claims.

Completed October 20th 1794.

page 433.] James Taylor, *D. S. W.*
Robert Adams *S. W. C.*

James Brooks)
Thomas Morgan)Chairmen.
James Wall—Marker)

Wyther County, Virginia ss.

I, James M. Gibboney, Surveyor of Wythe County do hereby certify that the above is a true copy from the records in my office

Given under my hand this 3rd day of September 1895.

James M. Gibboney, *S. W. C.*

page 434.] See map.

page 435.] SURVEY OF THOMAS WILSON 57000 ACRES.

Surveyed for Thomas Wilson fifty seven thousand acres of land by virtue of an entry made the 14th day of January, 1795 on two Land Office Treasury Warrants, one for 50,000 acres No. 966 and dated the 12th day of December 1794, assigned to him by William M. Elery the other for 7000 acres No. 618 and dated the 29th day of December 1794 in exchange for part of a land office treasury warrant 970 and dated the 13th day of December 1794, assigned to him by William M. Elery lying and being in the County of Wythe on Big Creek, Cucumber Creek and Horsepen Creek, waters of Great Sandy River and is bounded as follows, viz, Beginning at three white oaks by a branch of Tug River about eight miles above the mouth of Elkhorn fork of said river being a corner to a survey of 150,000 acres made for David Patterson and another survey of 480,000 acres made for Wilson Cary Nicholas and thence with the lines of the latter N. 25 W. 880 poles to five white oaks being a corner to a survey of 300,000 acres made for said Nicholas thence with the lines thereof and leaving the former survey *Sourth* 1600 poles to pointers, S. 13 W. 5080 poles crossing Big Sandy Creek, Cucumber Creek and Horsepen Creek to a white oak and pointers on said line thence leaving the same N. 52 E. 4700 poles crossing several branches to a chestnut and pointers near a stake being a corner to the first mentioned survey of 150,000 acres and with a line thereof N. 37 W. 3600 poles crossing several small water courses to the beginning.

JAMES TAYLOR, *Asst.*
R. ADAMS.

page 436.]

VIRGINIA, WYTHE COUNTY TO-WIT:

I, James M. Gibboney, Surveyor of Wythe County, Virginia, hereby certify that the annexed plot and certificate of survey is

a true copy from the records in my office. Given under my hand this 18th day of September 1902.

JAMES M. GIBBONEY,
Surveyor of Wythe County, Virginia.

page 437.]

SURVEY OF WILLIAM McCLARY 100000 ACRES.

Surveyed for William McClary 100,000 acres of land by virtue 2 Land Office Treasury Warrants of 50,000 acres each and Nos. 1143 and 1144 and dated the 4th Feby. 1795, lying and being in Kanawha County, on the waters of *Cole* river, Guyandotte, Tug and Sandy Rivers and the waters thereof and bounded as follows viz: Beginning at 2 sugar trees 12 po. from the confluence of Spruce Fork of Cole River and the left hand fork of the right hand fork of said river, being corner to a survey of 100,000 acres of land made for Elijah Woods and running with five of his lines S. 60° W. 40 poles to two holleys, N. 75° W. 160 poles to a white walnut S. 50° W. 100 poles to a birch S. 35° E. 220 poles to a *gun* S. 10° W. 320 poles to a poplar and beech corner to a survey of Richard Stocktons, and with three of his lines S. 37° W. 5880 poles to two black oaks, S. 50° W. 340 poles to two beeches. S. 71° W. 1070 poles to a black oak and ash corner to a survey of William McClary of 101,212 acres, with his line S. 50° W. 4200 poles to three poplars and a beech and a beech on the bank of the main left hand fork of Sandy River corner to the said William McClary survey and up the said river Sandy S. 60° E. 296 poles to a poplar, beech and sugar trees S. 25° E. 88 poles to two ashes, S. 35° W. 160 poles to a sugar tree S. 20° E. 80 poles to a beech, S. 40° E. 140 poles to a beech S. 20° W. 190 poles to a white oak E. 100 poles to an elm and buckeye S. 55° E. 140 poles to a black oak, N. 60° E. 100 poles to a red oak and five trees two ashes and hoopwood at the upper end of a narrows at the mouth of a gut, then leaving the river E. 1880 poles crossing same drains of Sandy to a beech and hickory N. 50°

E. 125 poles to five beeches on the bank of the right hand fork of Tug E. 56 poles crossing the same to two beeches

page 438.] S. 70° E. 72 poles to a beech and buckeye, N. 55° E. 70 poles to a lynn and beech N. 20° E. 40 poles to two white oaks N. 55° E. 160 poles to a chestnut-oak E. 190 poles to two chestnut-oaks in the top of the dividing ridge N. 50° E. 190 poles to two beeches by a drain which empties into the left hand fork of Tug River and down the same N. 80° E. 200 poles to a beech and lynn N. 25° E. 82 poles to two beeches N. 178 poles to two beeches N. 80° E. 100 poles to a sugar tree and beech, N. 80° E. 240 poles to a white oak N. 50° E. 300 poles to two chestnuts S. 75° E. 100 poles to two chestnut-oaks and chestnut N. 60° E. 360 poles to two beeches by a drain and down the same, N. 35° E. 60 poles to a beech and maple N. 75° E. 400 poles to a birch, beech and poplar and white oak N. 50° E. 480 poles to four beeches N. 5° E. 76 poles to a poplar and beech N. 40° E. 179 poles to two beeches N. 10° E. 24 poles to an ash and birch N. 5° W. 86 poles to a lynn and two sugar trees N. 55° E. 268 poles to three beeches N. 20° W. 110 poles to three beeches N. 40° E. 320 poles to a white oak and chestnut N. 70° E. 220 poles to a white oak and chestnut-oaks E. 130 poles to a chestnut-oak N. 40° E. 240 poles to a sugar tree and hickory E. 120 poles to a sugar tree and beech N. 50° E. 180 poles crossing Guyandotte to a poplar beech and black oak N. 33° E. 7680 poles crossing several branches of Cole to a beech and beech by a drain that empties into the main left hand fork of Cole river and up the same N 60° W. 960 poles to a white oak and maple S. 80° W. 1607 poles crossing Cole to the beginning. Including 75000 acres of prior claims for which there is an allowance made in the calculation.

G. W. Arnold, *Asst. to*
Rueben Slaughter, *S. K. Co.*

Thos. Upton,
Edw. Price, *Sworn Chainmen.*
Andrew Hatfield, *Marker.*
May 21, 1795.

page 439.]

MAPS

TOO

LARGE

FOR

FILMING

WM. S. N. BROWN, *C. K. C.*

This is a true copy from record book No. one record of surveys of Kanawha Co., W. Va.

page 440.] See map.

page 441.] ENTRY, 248 ACRES, EDWARD CRAWFORD.

The *Revd.* Edward Crawford by virtue of a State warrant of 500 acres No. 13251 dated the third day of Aug. 1782 assigned to him by Walter Crockett atto. in fact for James Clark enters the same as follows 248 acres on the Big Guyandotte 25 miles above the mouth of *Mill* Beg-g at the mouth of War Creek and extending up the Guyandotte 400 poles to include the low grounds on both sides and a large Salt Peter Cave in the edge of the low grounds and 252 on the Little Guyandotte and adjoining his entry made in April 11th 1783 to begin 800 poles above the lick and to extend up the Creek three hundred poles for quantity.

I certify that the above is a true copy of an entry made by Edward Crawford as it appears on the records of surveyors office of Montgomery County, Va., in entry book A page 201.

W. J. HALL, *Surveyor M. Co.*

Copied June 15th 1895.

page 442.] See map.

page 443.] CRAWFORD 248 ACRE SURVEY.

Edw'd Crawford 248 *acres*
Montgomery Rec'd 2d Feby. 1804
G'T iss'd Jany. 1805.

Surveyed for Edward Crawford 248 acres of land by virtue of an entry made the 28th day of January 1783 on part of Land Office Treasury Warrant for 500 acres No. 13251 dated the third day of August one thousand seven hundred and eighty two lying in Montgomery County on Guyandotte River at the mouth of War Creek and bounded as follows,—Beginning *ay* two beeches

and a poplar on the bank of the river a small distance below the mouth of War Creek thence S. 78° W. 117 poles to two poplars and a beeech in a small island of War Creek, thence crossing the main *streem* S. 23° E. 145 to a double poplar and gum tree on the bank of the river by a *precepice* of rocks S. 20 W. 69 crossing the river and up the several courses thereof and binding thereon 81 poles to three beeches on the bank at the upper end of a bottom, thence leaving the river N. 27 E. 125 to (two) spruce pines on the bank of the river thence crossing the same N. 46 E. 56 to the opposite bank and down the several courses thereof and binding thereon 212 poles to the beginning.

THOMAS CLOYD, *Asst.*
GORDON CLOYD, *S. M. C.*

Octob. 29 1798.
Variation 3° East.

LAND OFFICE, *Richmond, Va.*

I do certify that the foregoing survey and annexed plat are true copies taken from the records of this office.

Witness my hand and seal of office this 17th day of June, 1895.

S. P. EPES,
(VIRGINIA LAND OFFICE)
Register of the Land Office.

page 444.] AUDITOR'S CERTIFICATE—CRAWFORD CHARGED WITH 248 ACRES WITH No DESCRIPTION.

COMMONWEALTH of VIRGINIA
Office of the Auditor of Public Accounts,

(VIRGINIA)
(SIC SEMPER TYRANNIS) Richmond, Oct. 9" 1895.

Address all Communications to the
Auditor of Public Accounts.

I, Morten Marye Auditor of *Publis* Accounts of Va, certify that *Edward Crafford* is assessed on the Land Books of Montgomery

County State of Virginia for the year 1806 with a tract of land containing 248 acres of which there is no local description and that *Edward Crawford* is assessed on the Land Books of said County for the year 1809, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1819, with a tract of 248 acres of which there is no local description and I further certify that neither Edward Crafford, Edward Craford nor Isaac Spratt is assessed with any land on the Land Books of said County for the years 1820, 1821, 1822, 1823 & 1824.

Given under my hand the day and year first above written.

MOTEN MARYE
Aud. Pub Acct.

page 445.] AUDITOR'S CERTIFICATE — SPRATT CHARGED WITH 248 ACRES ON WAR CREEK 1825-1830.

State of West Virginia,
Charleston.

I, Isaac V. Johnson, Auditor of the State of West Virginia, do certify, that I have caused the land books of Logan county, West Virginia in file in this office, to be carefully examined and find a tract of land charged on the land books of said county of Logan, for the years 1825, 1826, 1827, 1829 and 1830 in the name of Isaac Spratt described as 248 acres located at mouth of War Creek, Guyan.

Given under my hand and official seal this 25th day of July, 1895.

I. V. JOHNSON, *Auditor*
By WM. A. CRACRAFT,
Chief Clerk.

(AUDITOR'S OFFICE)
(STATE OF WEST VIRGINIA)
(June 20, 1863)

page 446.] AUDITOR'S CERTIFICATE—GILBERT CREEK FIRST MENTIONED ON LAND BOOK IN 1829.

State of West Virginia,

Charleston.

I, Isaac V. Johnson, Auditor of the State of West Virginia, do certify that I have caused the land books of Logan county, West Virginia, now on file in the Auditor's Office to be carefully examined from the formation of said county up to the year 1829; and that there does not appear upon said land books any land described as being located on Gilberts Creek prior to said year 1829, when said Creek is mentioned in said book for the first time.

Given under my hand and official seal this 10th day of August 1895.

I. V. JOHNSON, *Auditor.*
By WM. A. CRACRAFT,
Ch. Clerk

(AUDITOR'S OFFICE)
(STATE OF WEST VIRGINIA)
(June 20, 1863.)

page 447.] DEPOSITION OF JAMES PERRY.

The Deposition of James Perry taken before the undersigned authority on the 15th day of June, 1895, between the hours of 9 o'clock, A. M. and 4 o'clock P. M. at the residence of George Justice on the Guyandotte River in the County of Mingo, State of West Virginia, pursuant to the agreement of all the parties by their attorneys (time and place only being waived by the plaintiff, all other points reserved) to be read as evidence on behalf of each and all of the defendants on the trial of each and all of the several actions of ejectment now pending in the Circuit Court of the United States of the District of West Virginia, wherein Henry C. King is plaintiff in each case and S. S. Altizer and others are defendants, in one case and others are defendants in the other

cases all of said *acton* of ejectment are brought to recover a tract of 500 000 acres known as the Robert Morris Survey, situate in the State of West Virginia, Virginia and Kentucky.

Present: C. M. Turley and C. W. Campbell of Counsel for said defendants.

H. K. Shumate, of Counsel for Henry C. King.

1 Ques. Please state your name, age and residence?

Ans. James Perry. Next March I will be 89 years old. I reside on Guyandotte river at the residence of George Justice in Mingo County, West Virginia, about a mile above Little Huff's creek.

2 Ques. Where were you born and reared?

Ans. I was born in what is now Logan County, West Virginia, about 2 miles above Big Huff's creek at the mouth of the Sand Lick branch. And was reared on that farm.

3 Ques. Are you acquainted with a creek called Gilberts creek, *empting* into the Guyandott river some miles above Big Huff's Creek?

Ans. Yes sir.

4th Quest How long have you known the creek?

[page 448.] Ans. Ever since I can recollect.

5th Quest Has it been known by any other name to your knowledge?

Ans. No sir.

6 Quest. Has any other tributary of the Guyandotte, either above or below ever been known as Gilbert's Creek?

Ans. Not that I ever heard of.

7 Quest. From what circumstance is it said that Gilbert's creek has taken its present name?

Ans. Well sir, They used to tell me that the Indians killed a man by the name of Gilbert, and taken a man by the name of Lusk prisoner. This was said to have taken place on Gilbert's creek.

8 Quest. Do you know where the Gordon Cloyd Survey of 7800 acres is said to be located with reference to said Gilbert's Creek?

(Objected to)

Ans. Yes. The Cloyd Survey was said to commence at the mouth of Gilbert and run down the river to Big Huff.

9. Quest. Did you ever see the Lusk who is said to have been taken prison by the Indians on Gilbert's Creek?

Ans. No sir.

10 Quest. What is the condition of your health? and is it such, that you could attend Court at Charleston or Parkersburg W. Va

Ans. It is bad, very bad. I can ride some times a mile, but can't walk that far. I could not get to court.

11 Quest. Did you ever own any part of the Gordon Cloyd survey hereinbefore referred to?

Ans. My father owned it I think. He claimed about 2500 acres.

12th Quest. What was your father's name?

Ans. Joseph Perry

13th Quest. Did he live on the part claimed, if so, how long?

Ans. Yes sir, I expect he lived there 50 years and may be longer.

14 Quest. Is your father living or dead?

Ans. He is dead. He died about the second year of the war. I rather think about 1860.

page 449.] CROSS EXAMINATION.

1st Quest. When did your father move to this country?

Ans. He moved here before I was born. He moved from Monroe.

2nd Quest. Were the creeks along Guyandotte river named at your earliest recollection the same as now?

Ans. Yes sir;—

3rd Quest. Did you know of any creek, *empting* into Guyandotte river by the name of either Little Elk, Beaver or Bear Creek.

Ans. No sir.

4th Quest. Did you know any place along the river by the

name of Cane bottom?

Ans. Yes sir. It was about a mile above the Sand Lick.

5, Quest. Do you recollect when Isaac Spratt moved to the mouth of Gilbert's creek?

Ans. No sir.

6, Quest. When did you first become acquainted with Isaac Spratt, if you knew him.

Ans. *Where* but a little boy. I was very small.

7th Quest. *When* about near the mouth of Gilbert was he living when you first knew him?

Ans. At the mouth of Gilbert on the same side where it runs in & about the mouth.

8th Quest. Do you know when the little bottom below the mouth of Gilbert was cleared?

Ans. No sir. I don't.

9 Quest. Was it cleared when you first became acquainted with it.

Ans. Yes sir.

And further this deponent saith not.

his
JAMES x PERRY
mark

page 450.] State of West Virginia
Mingo County, to-wit:

I, John Buchanan, a Justice in and for said county do hereby certify that the foregoing deposition of James Perry was duly taken, subscribed and sworn to before at the time & place mentioned in the caption.

Given under my hand this 15th day of June, 1895.

JOHN BUCKANNAN, *Justice.*

James Perry 1 day $1.00 Paid by defts
John Buchannan J P
for 4 Hours $3.00 paid by defts.

page 451.] DEED.

ROBERT E. RANDALL, TRUSTEE OF JAMES SWAN ESTATE,

TO

SMITH & FOUGERAY, TRUSTEE OF THE BIG SANDY L. & M. Co.

This deed made the 10th day of October, in the year of our Lord one thousand eight hundred and eighty five (1885) between Robert E. Randall of the City, County and State of New York, trustee of the lands of the estate of James Swan, deceased, of the first part, Christian F. Smith and Reue J. Fougeray Sr., of the City and Couty of Philadelphia and State of Pennsylvania, in trust for the sole issue of the Big Sandy Land and Manufacturing Company, a corporation chartered under the laws of the State of New Jersey, of the second part.

WITNESSETH, that in consideration of the sum of thirteen thousand dollars ($13,000), the receipt of which is hereby acknowledged, said party of the first part doth graat unto said party of the second part, their successors and assigns, all of a tract of thirteen thousand (13,000) acres of contiguous land that the said party of the second part may survey and lay out from what is known as the Swan Tract of five hundred thousand (500,000) acres situate in the Counties of Logan, Wyoming and McDowell and State of West Virginia, patented to Robert Morris, assignee of Wilson Cary Nicholas, by the Commonwealth of Virginia, on the twenty-third day of June, 1795, the survey of which is dated the twenty eighth day of October, 1794, and is thereby described as follows, viz:

Lying and being in the counties of Wythe and Russell the greater part thereof in the former, on Sandy and *Guyandottee* Rivers and the waters thereof, and is bounded as follows to wit:

BEGINNING at two poplars and two chestnut trees on a branch of Sandy River, being a corner of a survey of said

page 452.] Nicholas of four hundred and eighty thousand (480,-000) acres and a survey of three hundred and twenty thousand (320,000) acres made for said Nicholas and Jacob Kinney, and with a line of the latter, S. 33° W. 6720 poles, crossing a dividing ridge and down War Creek to the mouth, crossing Sandy River at six (6) miles, crossing Panther Creek at nine (9) miles, and crossing several ridges, to four white oaks on the N. W. banks of Knox's Creek and thence leaving said survey,

West, 3840 poles, crossing a creek and some of the branches thereof and along the spurs of a ridge dividing the water of said creek and Peter's Creek, a branch of Sandy River to three poplars and same, being the N. W. Corner of a survey of said Nicholas of four miles, Sandy River at twelve miles, the mouth of Turkey Creek, and up the said Creek and N. W. fork of the same, crossing Buffalo Creek and Pigeon Creek and the dividing ridge between Sandy and Guyandotte River, to three sugar trees in a bottom of said river, and about twenty poles below the mouth of Gilbert's Creek and thence, N. 10° E. 4450 poles, crossing Guyandotte River, several small branches and some ridges, to pointers; then

East, 6620 poles, crossing Guyandotte River and several branches thereof, to three sugar trees and a buckeye by a smal bronch of the same, being the N. W. Corner of a survey of said Nicholas of four hundred and eighty thousand (480,000) acres, and thence with the same,

South, 6800 poles, crossing Huff's Creek, or Cain Creek, to the BEGINNING.

TO HAVE AND TO HOLD the above described and herein granted tract of land to them, the said Christiaa F. Smith and Reue J. Fougeray Sr., trustee as aforesaid, to and for the only proper use, benefit and behoof of them, the said Christian F. Smith and Reue J. Fougeray, trustees as aforesaid,

page 453.] their successors and assigns forever, and the said party of the first part, for himself, his successors and assigns, doth hereby covenant the said party of the second part, their successors and assigns that he will warrant the property here-

by conveyed against any prior claims, prior *patients* or entries, and against any party or parties claiming under him. Witness the following signatures and seal.

ROBERT E. RANDALL, (SEAL)
Trustee of the estate of James Swan, deceased.

E. H. BAILEY)
GEO. MCKEORN)

State of Pennsylvania,
County of Philadelphia, ss.

I, E. H. Bailey, one of the Notaries Public in and for the said County, do certify that Robert E. Randall, Trustee, whose name is signed to the above writing, bearing date the 10th day of October A. D. 1885, hath acknowledged the same before me in my County aforesaid.

Given under my hand and official seal this 10th day of October, A. D. 1885.

E. H. BAILEY
Notary Public
Philada. Pa.

E. H. BAILEY, *Not. Pub.*

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West Virginia:

In the Clerk's office of the County Court of Wyoming County.

This deed was this day presented in said office to me for record, and thereupon the same together with the certificate thereto annexed was duly admitted to record therein.

Given under my hand and official seal, this twenty sixth day of November, A. D. 1885.

County Court.
West Virginia,
Wyoming County.

F. P. ROACH,
Clerk Wyoming County Court, W. Va.

A true copy from the records of my office to wit: Deed Book "I" page 356 &c.

Teste: C. F. STEWART, *Clerk.*
per E. M. SENTER, *Deputy.*

COUNTY COURT,
WYOMING COUNTY,
WEST VIRGINIA.

page 455.] DEED.

Robert E. Randall, Trustee of James Swan Estate,
to
Samuel Baugh

This deed made this the tenth day of October, in the year of *our* Lord one thousand eight hundred and eighty five (1885 between Robert E. Randall of the City, County and State of New York, trustee of the lands of the estate of James Swan, deceased, of the first part, and Samuel Baugh of the City and County of Philadelphia and State of Pennsylvania of the second art; witnesseth that in *consideration* of the sum of one thousand *dollear* ($1,000), the receipt of which is hereby acknowledged, the said party of the first part doth *geant* unto the said party of the second part, his successors and assigns, all of the tract of one thousand (1,000) acres of contiguous land that the party of the second part may survey and lay out from what is *is* known as the *swan* tract of five hundred thousand (500,000) acres, situated in the Counties of Logan, Wyoming and McDowell, State of West Virginia and adjacent and contiguous to a thirteen thousand (13,000) acre tract this day conveyed by the party of the first part to C. F. Smith and R. J. Fougeray of the City and County of Philadelphia and State of Pennsylvania, in trust for the Big Sandy Land and Manufacturing Company, a corporation chartered under the laws of the State of New Jersey, in which said deed of conveyance the said thirteen thousand (13,000) acre tract is described as follows, to-wit:

page 456.] All of a tract of thirteen thousand (13,000) acres of land contiguous, that the party of the second part may survey and lay out from what is known as the Swan tract of

five hundred thousand (500,000) acres, situated in the Counties of Logan, Wyoming and McDowell and State of West Virginia, patented to Robert Morris, assignee of *Eilson* Cary Nichols, by the Commonwealth of Virginia on the 23rd day of June, A. D. 1795, the survey of which is dated the 28th day of October A. D. 1794, and is thereby described as follows, viz:

Lying and being in the Counties of Wythe and Russell the greater part thereof in the former, on Sandy and Guyandotte Rivers and the waters thereof, and is bounded as follows, to wit:

BEGINNING at two poplars and two chestnuts on a branch of Sandy River, being a corner of a survey of said Nicholas of four hundred and eighty thousand (480,000) acres, and a survey of three hundred and twenty thousand (320,000) acres made for said Nicholas and Jacob Kinney and with a line of the latter, S. 33° 6720 poles, crossing a dividing ridge and down War Creek to the mouth, crossing Sandy River at six miles, crossing Panther Creek at nine miles, and crossing several ridges, to four white oaks on the N. W. banks of Knox's Creek, and thence leaving said survey, West, 3840 poles, crossing a creek and some of the branches thereof, and along the spurs of a ridge dividing the waters of said creek and Peter's Creek, and branch of Sandy River, to three poplars and a sugar tree by a small branch of Knox's Creek at about four miles, Sandy River at about twelve miles, the mouth of Turkey Creek and up the said Creek and the N. W. forks of the same crossing Buffalo Creek and Pigeon Creek, and the dividing ridge between Sandy and Guyandotte Rivers, and Gilbert's Creek twice, a branch of Guyandotte, to three sugar trees in a bottom of said river and about twenty below the mouth of Gilbert's Creek and thence.

page 457.] N. 10° E. 4450 poles, crossing Guyandotte River, several small branches and some ridges, to pointers. Then East 6620 poles crossing Guyandott River and several branches thereof, the three sugar trees and a buckeye by a small branch of the same, being the N. W. corner of a survey of said Nicholas of four hundred and eighty thousand (480,000) acres, and thence, with the same.

South 6800 poles, crossing Hutt's Creek, or Cain Creek, to the BEGINNING.

TO, HAVE AND TO HOLD the above described and herein granted tract of land to Samuel Baugh as aforesaid to and for the only proper use, benefit and behoof of the said Samuel Baugh, his successors and assigns and the said party of the first part, for himself, his successors and assigns does hereby covenant with the said party of the second part, his successors and assigns, that he will warrant the property herein conveyed against any prior claims, prior patents or entries, and against any party or parties claiming under him. Witness the following signature and seal

ROBERT E. RANDALL (SEAL)

Trustee of the Estate of James Swan, deceased.

Witnesses

E. H. BAILEY,

GEO. MCKEON,

State of Pennsylvania,

page 458.] County of Philadelphia, SS.

I, E. H. Bailey, one of the Notaries Public in and for the said County of Philadelphia, do certify that Robert E. Randall, Trustee, whose name is signed to the above writing, bearing date the 10th day of October A. D. 1885, hath acknowledged the same before me in my County aforesaid.

Given under my hand and official seal this 10th day of October A. D. 1885.

E. H. BAILEY, *Not. Pub.*

* * * * * *
* E. H. BAILEY *
* Notary Public *
* Philadea. Pa. *
* * * * * *

West Virginia:

page 459.] In the Clerk's Office of the County Court of Wyoming County.

This Deed was this day presented in said office to me for rec-

ord, and thereupon the same together with the certificate thereto annexed was duly admitted to record therein.

Given under my hand and official seal this 26th day of November A. D. 1885.

F. P. ROACH, *Clerk.*

* * * * * * * *
* County Court *
* West Virginia *
* Wyoming County *
* * * * * * * *

Wyoming County Court, West Virginia.

A true copy from the records of my office Deed Book "I" pages 352, 353, 354 and 355.

Teste: C. F. STEWART, *Clerk*
per E. M. SENTER, *Deputy Clerk.*

(COUNTY COURT)
(WYOMING COUNTY)
(WEST VIRGINIA)

page 460.] DECLARATION—IN EJECTMENT; RANDALL v. WARD ET ALS.

In the District Court of the United States for the Western District of Virginia.

Holden at Charleston, Kanawha County, Virginia.

JOSIAH RANDALL, a citizen of the State of Pennsylvania, complains of Evermont Ward, Anthony Lawson, James Lawson, John Allen, Carr Allen, John H. Alderson, Warren Alderson, James Allison, Thomas Buckhanan, Harvey Bailey, Archibald Bailey, Rufus Bailey, James Bailey, Thomas Bailey, Rhodes D. Ballard, Evan Bin, James Botchon, Moses Brown, James Brown, Hilary Blankenship, Isom Blankenship, Mary Blankenship, Henry Blankenship, Thomas E. and John R. Browning, Thomas E. Browning, John R. Browning, Jesse Browning, Nathaniel Browning, Oliver Browning, William Browning, Jr., John Bur-

gess, Andrew Burgess, Calvers Burgess, Lewis Brewer, Hugh Bryan, Cutters Ballard, Jack Cline, Jacob Cline, William Cline, James Cline, Michael Cline, Jr., Christian Cline, David Cline, Thomas Cline, Lorenzo D. Chambers, James Chambers, James P. Christian, Parant Christian, Patterson Christian, Barney Christian, Richard D. Coleman, Samuel Canterbury, John Cooke, William D. Cooke, William A. Cooke, James Cooke, Mitchell Cooke, Josiah Cooke, Thomas Cooke, William Collins, Sr., William Collins, Jr., William Dempsey, Joseph Dempsey, Mark Dempsey, John Dingess, Andrew Dempsey, Charles F. Dingess, James Ellis, Henry Ellis, Madison Ellis, Jacob D. Ellis, Loyd Ellis, Robert Elkins, Walter Elkins, William Elkins, John Ferrell, Paris Godfrey, Lewis G. Godfrey, A. Lewis Godfrey, Levi Goare, Eli Goare, Eli Hatfield, Ephraim Hatfield, Madison Hatfield, Jacob Hatfield, Thomas Hatfield, Valentine Hatfield, Joseph Holst, William Harvey, son of John, Paterson Harvey, Josiah Harvey, John Harvey, Henry Harvey, L. Ransom H. Harvey, William Hinchman, Ulysses Hinchman, Floyd Hinchman, Lewis Hinchman, George Johnson, James Justice, Thomas Justice, Lewis B. Lawson, Pleasant Lester, Isaac Lester, Martin Lester, Philip Lambert, Garrett Lambert, Bird Lockhart, John Mullins, Thos. Mullins, Wm. Mullins, Thos. Mullins, Herndon Murphy, David Mountz, William Mountz, Alexander Mountz, Michael Mountz, Jackson Mountz, Peter Mountz, Charles Mountz, Mark Key Mountz, Bannister Meadow, Frances Mitchell, Common Music, David Morgan, Isaac Morgan, Anthony Morgan, Floyd Morgan, Jordan T. Mitchell, William McDonald, Joseph McDonald, Gordon McDonald, Wales McDonald, John C. McDonald, Edmond McDonald, Stephen McDonald, William W. McDonald, Lewis McDonald, George W. Nighbert, Isaac New, James Perrys, Widow Perrys, Granville Perrys, William Perrys, David Patrick, Samuel Patterson, Gabriel Reffee, William Reffee, Peter Reffee, Cornelius Roberts, Jesse Roberts, Richard Ratcliffe, Widow Spratt (of Isaac), James Spratt, John Spratt, John Smith, Larken Smith, Baptist Stell & J. Fenwick, William Shields

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William Stuart, Charles Stuart, G. P. Stuart, Joseph Stattford, James Starr, James Shannon, William Stratton, Thomas Toler, Elkins Toler, William Toler, Jr., Squire Toler, Charles Toler, Humphrey Trent, Hilary Trent, Frederick Trent, James Taylor, Thomas Taylor, Abner Vance, John H. Warner, Alexander Warner, Andrew Warner, Samuel Vanater, Joseph Walls, Henry Wallace, Joseph Workman, G. Works, Matthewson Wythe, Benjamin W. Wythe, Roel Ballard, Preston Perrys, Abner H. Lester, Joseph Perrys.

All citizens of Virginia, and residing in the Western District thereof, who have been summoned, &c., of a plea of trespass in ejectment, for that the said plaintiff on the first day of July, 1859, was *possesses* in fee of a certain tract of land, granted by the Commonwealth of Virginia, by Robert Brooke,

page 462.] Esq., then Governor of said Commonwealth, by patent bearing date on the 23rd day of June, 1795, to Robert Morris, assignee of Wilson Cary Nicholas, containing five hundred thousand acres, then lying and being in the counties of Wythe and Russell, and now lying and being principally in the county of Logan, in said Western District of Virginia, the greater part thereof on Sand and Guyandotte rivers and the waters thereof, and bounded as follows, to-wit:

Beginning at two poplars and two chestnut trees on a branch of Guyandotte river, and about six miles from the mouth of Little War Creek, a branch of Sandy river, being a corner of a survey of said Nicholas of four hundred and eighty thousand acres and a survey of three hundred and twenty thousand acres, made for said Nicholas and Jacob Kenney, with a line of the latter South thirty-three degrees, West six thousand seven hundred and twenty poles crossing a dividing ridge, and down War creek to the mouth, crossing Sandy river at six miles, crossing Panther creek at nine miles, and crossing several ridges to four white oaks on the Northwest bank of Knox creek, and thence leaving said survey, West three thousand eight hundred and *forth* poles crossing said creek and some of the branches thereof, and along the

spurs of the ridge dividing the waters of said creek and Peters creek, a branch of Sandy river, to three poplars and a sugar tree by a small branch of Knox's creek, thence North eight thousand poles, crossing Knox's creek at about four miles, Sandy river at twelve miles at the mouth of Turkey creek, and up said creek and the Northwest forks of the same, crossing Buffalo creek, Pigeon creek and the dividing ridge between Sandy and Guyandotte rivers and Gilbert's creek, twice, a branch of Guyandotte, to three sugar trees in a bottom of said river, and about twenty poles below the mouth of Gilbert's creek, and thence North ten degrees East four thousand four hundred and fifty poles crossing Guyandotte river, several small branches and some ridges to pointers, thence East six thousand six hundred and twenty poles crossing Guyandotte river, and several small
page 463.] branches thereof, to three sugar trees and a buckeye by a small branch of the same, being the Northwest corner of the survey of said Nicholas of four hundred and eighty thousand acres, and thence with the same, South six thousand eight hundred poles, crossing Huffs or Cain creek to the beginning.

And being so possessed thereof, the said defendants, afterwards, to-wit: on the said first day of July, 1859, entered into said premises, and they do and each of them doth withold from the said plaintiff the possession thereof, to the damage of said plaintiff of fifty thousand dollars, and therefore this suit is brought, &c.

SECOND COUNT.

And for this, that Ernest—Joseph-Auguste Marie Bellot des Minieres, Aleide-Henry Bellot des Minieres, and Achille Hilaire Olivari, a citizen of the Empire of France, complains of Evermont Ward, Anthony Lawson, James Lawson, John Allen, Carr Allen, John H. Anderson, Warren Alderson, James Allison, Thomas Buchanan, Harvey Bailey, Archibald Bailey, Rufus Bailey, James Bailey, Thomas Bailey, Rhodes

D. Bailey, Evan Bin, James Botchon, Moses Brown, James Brown, Hiliary Blankenship, Isom Blankenship, Mary Blankenship, Henry Blankenship, Thomas E. and John R. Browning, Thomas E. Browning, John R. Browning, Jesse Browning, Nathaniel Browning, Oliver Browning, William Browning, Jr. John Burgess, Andrew Burgess, Calvers Burgess, Lewis Brewer, Hugh Bryan, Cutters Ballard, Jack Cline, Jacob Cline, William Cline, James Cline, Michael Cline, Jr., Christian Cline, David Cline, Thomas Cline, Lorenzo D. Chambers, James Chambers, James P. Christian, Parant Christian, Patterson Christian, Barney Christian, Richard D. Coleman, Samuel Canterbury, John Cooke, William D. Cooke, William A. Cooke, James Cook, Mitchell Cooke, Josiah Cooke, Thomas Cooke, William Collins, Sr., William Collins, Jr., William Dempsey, Joseph Dempsey, Mark Dempsey, John Dingess, Andrew Dempsey, Charles F. Dingess, James Ellis, Henry Ellis, Madison Ellis, Jacob D Ellis, Loyd Ellis, Robert Elkins, Walter Elkins, Williams Elkins,

page 464.] John Ferrell, Paris Godfrey, Thomas Godfrey, Lewis G. Godfrey, A. Lewis Godfrey, Levi Goare, Eli Goare, John Goare, Eli Hatfield, Ephraim Hatfield, Madison Hatfield, Jacob Hatfield, Thomas Hatfield, Valantine Hatfield, Joseph Holst, William Harvey, son of John, Peterson Harvey, Josiah Harvey, John Harvey, Henry Harvey, L. Ransom H. Harvey, William Hinchman, Ulysses Hinchman, Floyd Hinchman, Lewis Hinchman, George Johnson, James Justice, Thomas Justice, Lewis B. Lawson, Pleasant Lester, Isaac Lester, Martin Luster, Philip Lambert, Garrett Lambert, Bird Lockhart, John Mullins, Thos. Mullins, Wm. Mullins, Thos. Mullins, Herndon Murphy, David Mountz, William Mountz, Alexander Mountz, Michael Mountz, Jackson Mountz, Peter Mountz, Charles Mountz, Mark Rey Mountz, Bannister Meadow, Frances Mitchell, Common Music, David Morgan, Anthony Morgan, Floyd Morgan, Jordan T. Mitchell, William McDonald, Joseph McDonald, Gordon McDonald, Wales McDonald, John C. McDonald, Edward McDonald, Stephen McDonald, William W. McDonald, Lewis McDon-

ald, George W. Nighbert, Isaac New, James Perrys, Widow Perrys, Granville Perrys, William Perrys, David Patrick, Samuel Patterson, Gabriel Reffee, William Reffee, Peter Reffee, Cornelius Roberts, Jesse Roberts, Richard Rateliff, Widow Spratt, (of Isaac), James Spratt, John Spratt, John Smith, Larken Smith, Baptist Stell & J. Fenwick, William Shields, William Stuart, Charles Stuart, G. P. Stuart, Joseph Stafford, James Starr, James Shannon, William Stratton, Thomas Toler, Elkins Toler, William Toler, Jr., Squire Toler, Charles Toler, Humphrey Trent, Hilary Trent, Frederick Trent, James Taylor, Thomas Taylor, Abner Vance, John H. Warner, Alexander Warner, Andrew Warner, Samuel Vanater, Joseph Walls, Henry Wallace, Joseph Workman, G. Works, Matthewson Wythe, Benjamin W. Wythe, Roel Ballard, Preston Perrys, Abner H. Lester, Joseph Lester.

All citizens of Virginia, and residing in the Western District thereof, who have been summoned, &c., of a plea of trespass in ejectment, for that the said plaintiffs on the first day of July, 1859, was possessed in fee of a certain tract of land, granted by the Commonwealth of Virginia, by Robert Brooke, Esq., then Governor of said Commonwealth, by patent bearing date on the 23rd day of June, 1795, to Robert Morris, assignee of Wilson Cary Nicholas, containing five hundred thousand acres, then lying and being in the counties of Wythe and Russell, and now lying and being principally in the county of Logan, in said Western District of Virginia, the greater part thereof on Sandy and Guyandotte rivers and the waters thereof, and *bounde* as follows, to-wit:

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Beginning at two poplars and two chestnut trees on a branch of Guyandotte river, and about six miles from the mouth of Little War creek, a branch of Sandy river, being a corner of a survey of said Nicholas of four hundred and eighty thousand acres and a survey of three hundred and twenty thousand acres, made for said Nicholas and Jacob Kenney, and with a line of the latter South thirty-three degrees, West six thousand seven hun-

dred and twenty poles crossing a dividing ridge, and down War creek to the mouth, crossing Sandy river at six miles, crossing Panther creek at nine miles, and crossing several ridges to four white oaks on the Northwest bank of Knox's creek, and thence leaving said survey, West three thousand eight hundred and forty poles crossing said creek and some of the *baranches* thereof, and along spurs of the ridge dividing the waters of said creek and Peters creek, a *brach* of Sandy river, to three poplars and a sugar tree by a small branch of Knox's creek, thence North eight thousand poles, crossing Knox's creek at about four miles, Sandy river at twelve miles at the mouth of Turkey creek, and up said creek and the Northwest forks of the same, crossing Buffalo creek, Pigeon creek and the dividing ridge between Sandy and Guyandotte rivers and Gilbert's creek, twice, a branch of Guyandotte, to three sugar trees in a bottom of said river, and about twenty poles below the mouth of Gilbert's creek, and thence North ten degrees East four thousand four hundred and fifty poles crossing Guyandotte river, several small branches and some ridges to pointers, thence East six thousand six hundred and twenty poles crossing Guyandotte river, and several [page 466] branches thereof, to three sugar trees and a buckeye by a small branch of the same, being the Northwest corner of the survey of said Nicholas of four hundred and eighty thousand acres, and thence with the same, South six thousand eight hundred poles, crossing Huffs or Cain creek, to the beginning;

And being so possessed thereof, the said defendants, afterwards, to-wit: on the said first day of July, 1859, entered into said premises, and they do and each of them doth *withold* from the said plaintiffs the possession thereof, to the damage of said plaintiffs of fifty thousand dollars, and therefore this suit is brought, &c.

THIRD COUNT.

And also for this, that Ernest-Joseph-Auguste-Marie Bellot des Minieres, Alcide-Henry Bellot des Minieres, Archille-Hilaire

Olivari, and Auguste, Marie-Francois-Firmin Noverre de Sericourt, all citizens of the Empire of France, complains of Evermont Ward, Anthony Lawson, James Lawson, John Allen, Carr Allen, John H Anderson, Warren Alderson, James Allinson, Thomas Buchannan, Harvey Bailey, Archibald Bailey, Rufus Bailey, James Bailey, Thomas Bailey, Rhodes D. Ballard, Evan Bin, James Botchon, Moses Brown, James Brown, Hilary Blankenship, Isom Blankenship, Mary Blankenship, Henry Blankenship, Thomas E. and John R. Browning, Thomas E. Browning, John R. Browning, Jesse Browning, Nathaniel Browning, Oliver Browning, William Browning, Jr., John Burgess, Andrew Burgess, Calvers Burgess, Lewis Brewer, Hugh Bryan, Cutters Ballard, Jack Cline, Jacob Cline, William Cline, James Cline, Michael Cline, Jr., Christian Cline, David Cline, Thomas Cline, Lorenzo D. Chambers, James Chambers, James P. Christian, Parant Christian, Patterson Christian, Barney Christian, Richard D. Coleman, Samuel Canterbury, John Cooke, William D. Cooke, William A. Cooke, James Cooke, Mitchell Cooke, Josiah Cooke, Thomas Cooke, William Collins, Sr., William Collins, Jr., William Dempsey, Joseph Dempsey, Mark Dempsey, John Dingess, Andrew Dempsey, Charles F. Dingess, James Ellis, Henry Ellis, Madison Ellis, Jacob D. Ellis, Loyd Ellis, Robert Elkins, Walter Elkins, William Elkins, John Ferrell, Paris Godfrey, Thomas Godfrey, Lewis G. Godfrey, A. Lewis Godfrey, Levi Goare, Eli Goare, John Goare, Eli Hatfield, Ephraim Hatfield, Madison Hatfield, Jacob Hatfield, Thomas Hatfield, Valentine Hatfield, Joseph Holst, William Harvey, son of John, Peterson Harvey, Josiah Harvey, John Harvey, Henry Harvey, L. Ransom H. Harvey, William Hinchman, Ulysses Hinchman, Floyd Hinchman, Lewis Hinchman, George Johnson, James Justice, Thomas Justice, Lewis B. Lawson, Pleasant Lester, Isaac Lester, Martin Luster, Philip Lambert, Garrett Lambert, Bird Lockhart, John Mullins, Thos. Mullins, Wm. Mullins, Thos. Mullins, Herndon Murphy, David Mountz, William Mountz, Alexander Mountz, Michael Mountz,

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Jackson Mountz, Peter Mountz, Charles Mountz, Mark Rey Mountz, Bannister Meadow, Frances Mitchell, Common Music, David Morgan, Isaac Morgan, Anthony Morgan, Floyd Morgan, Jordan T. Mitchell, William McDonald, Joseph McDonald, Gordon McDonald, Wales McDonald, John C. McDonald, Edward McDonald, Stephen McDonald, William McDonald, Lewis McDonald, George W*l* Nighbert, Isaac New, James Perrys, Widow Perrys, Granville Perrys, William Perrys, David Perrys, Samuel Patterson, Gabriel Reffee, William Reffee, Peter Reffee, Cornelius Roberts, Jesse Roberts, Richard Ratcliff, Widow Spratt, (of Isaac,) James Sratt, John Spratt, John Smith, Larken Smith, Baptist Stell & J. Fenwick, William Shields, William Stuart, Charles Stuart, G. P. Stuart, Joseph Stafford, James Starr, James Shannon, William Stratton, Thomas Toler, Elkins Toler, William Toler, Jr., Squire Toler, Humphrey Trent, Hilary Trent, Frederick Trent, James Taylor, Thomas Taylor, Abner Vance, John H. Warner, Alexander Warner, Andrew Warner, Samuel Vanater, Joseph Walls, Henry Wallace, Joseph Workman, G. Works, Matthewson Wythe, Benjamin W. Wythe, Roel Ballard, Preston Perrys, Abner H. Lester, Joseph Lester.

page 468.] Virginia Logan County to wit this day personally appeared Humphrey Trent before me the under assign Justices of the peacy and made oath that he delivered a copy of the notices a copy of the declaration to the following persons to namely to wit James Justice, Paris Godfrey, Joseph Lester, Larkin Smith, William Reffee, Gabriel Reffee, Mechael Cline, Rufus Bailey, James Allison to William Mullins by *givin* his *dauter* a copy to Henry Blankenship by *given* his wife a copy William Elkins.

Given under my hand this 25 day of Oct. 1859. J. P.

All citizens of Virginia, and residing in the Western District thereof, who have been summoned, &c., of a plea of trespass in ejectment, for that said plaintiffs on the first day of July, 1859, was *possesses* in fee of a certain tract of land, granted by the

Commonwealth of Virginia, by Robert Brooke, Esq., then Governor of said Commonwealth, by patent bearing date on the 23rd day of June, 1795, to Robert Morris, assignee of Wilson Cary Nicholas, containing five hundred thousand acres, then lying and being in the counties of Wythe and Russell, and now lying and being principally in the county of Logan, in said Western District 1859, was *poisesses* in fee of a certain tract of land,g ranted rivers and the waters thereof and bounded as follows, to-wit:

Beginning at two poplars and two chestnut trees on a branch of Guyandotte river, and about six miles from the mouth of Little War creek, a branch of Sandy river, being a corner of a survey of said Nicholas of four hundred and eighty thousand acres and a survey of three hundred and twenty thousand acres, made for said Nicholas and Jacob Kenney, with a line of the latter South thirty-three degrees West six thousand seven hundred and twenty poles crossing a dividing ridge, and down War creek to the mouth crossing Sandy river at six miles, crossing Panther creek at nine miles, and crossing several ridges to four white oaks on the Northwest bank of Knox's creek, and thence leaving said survey, West three thousand eight hundred and forty poles crossing said creek and some of the branches thereof, and along the spurs of the ridge dividing the waters of said creek and Paters creek, a branch of Sandy river, to three poplars and a sugar tree by a small branch of Knox's creek, thence North eight thousand poles, page 469.] crossing Knox's creek at about four miles, Sandy river at twelve miles at the mouth of Turkey creek, and up said creek and the Northwest forks of the same, crossing Buffalo creek, Pigeon creek and the dividing ridge between Sandy and Guyandotte rivers and Gilbert's creek, twice, a branch of Guyandotte, to three sugar trees in a bottom of sai[illegible]ver, and about twenty poles below the mouth of Gilbert's creek, and thence North ten degrees East four thousand four hundred and fifty poles crossing Guyandotte river, several small branches and some ridges to pointers, thence East six thousand six hundred and twenty poles crossing Guyandotte river, and several branches there-

of, to three sugar trees and a buckeye by a small branch of the same, being the Northwest corner of the survey of said Nicholas of four hundred and eighty thousand acres, and thence with the same, South six thousand eight hundred poles, crossing Huffs or Cain creek, to the beginning;

And being so possessed thereof, the said defendants, afterwards, to-wit: on the said first day of July, 1859, entered into said premises, and they do and each of them doth withhold from the said plaintiffs the possession thereof, to the damage of said plaintiffs of fifty thousand dollars, and therefore this suit is brought, &c.

FOURTH COUNT.

page 470.] And also for this, that Josiah Randall, a citizen of the State of Pennsylvania, Ernest—Joseph-Auguste-Marie Bellot des Minieres, Alcide-Henry Bellot des-Minieres, and Archille-Hilaire Olivari, the last three being citizens of the Empire of France, *complaines* of Evermont Ward, Anthony Lawson, James Lawson, John Allen, Carr Allen, John H. Anderson, Warren Alderson, James Allison, Thomas Buchanan, Harvey Bailey, Archibald Bailey, Rufus Bailey, James Bailey, Thomas Bailey, Rhodes D. Ballard, Evan Bin, James Botchon, Moses Brown, James Brown, Hilary Blankenship, Isom Blankenship, Mary Blankenship, Henry Blankenship, Thomas E. and John R. Browning, Thomas E. Browning, John R. Browning, Jesse Browning, Nathaniel Browning, Oliver Browning, William Browning, Jr., John Burgess, Andrew Burgess, Calvers Burgess, Lewis Brewer, Hugh Bryan, Cutters Ballard, Jack Cline, Jacob Cline, William Cline, James Cline, Michael Cline, Jr., Christian Cline, David Cline, Thomas Cline, Lorenzo D. Chambers, James Chambers, James P. Christian, Parant Christian, Patterson Christian, Barney Christian, Richard D. Coleman, Samuel Canterbury, John Cooke, William D. Cooke, William A. Cooke, James Cooke, Mitchell Cooke, Josiah Cooke, Thomas Cooke, William Collins, Sr., William Collins, Jr., William Dempsey, Joseph Dempsey, Mark Dempsey, John Dingess, Andrew Dempsey, Charles F. Dingess, James Ellis, Henry Ellis, Madison Ellis, Jacob D. Ellis, Loyd

Ellis, Robert Elkins, Walter Elkins, William Elkins, John Ferrell, Paris Godfrey, Thomas Godfrey, Lewis G. Godfrey, A. LEWIS Godfrey, Levi Goare, Eli Goare, Joh Goare, Eli Hatfield, Ephraim Hatfield, Madison Hatfield, Jacob Hatfield, Thomas Hatfield, Valentine Hatfield, Joseph Holst, William Harvey, son of John, Patterson Harvey, Josiah Harvey, John Harvey, Henry Harvey, L. Ransom, H. Harvey, William Hinchman, Ulysses Hinchman, Floyd Hinchman, Lewis Hinchman, George Johnson, James Justice, Thomas Justice, Lewis B. Lawson, Pleasant Lester, Isaac Lester, Martin Lester, Philip Lambert, Garrett Lambert, Bird Lockhart, John Mullins, Thos. Mullins, Wm. Mullins, Herndon

page 471.] Murphy, David Mountz, William Mountz, Alexander Mountz, Michael Mountz, Jackson Mountz, Peter Mountz, Charles Mountz, Mark Rey Mountz, Bannister Meadow, Frances Mitchell, Common Music, David Morgan, Isaac Morgan, Anthony Morgan, Floyd Morgan, Jordon T. Mitchell, William McDonald, Joseph McDonald, Gordon McDonald, Wales McDonald, John C. McDonald, Edward McDonald, Stephen McDonald, William W. McDonald, Lewis McDonald, George W. Nighbert, Isaac New, James Perrys, Widow Perrys, Granville Perrys, William Perrys, David Patrick, Samuel Patterson, Gabriel Reffee, William Reffee, Peter Reffee, Cornelius Roberts, Jesse Roberts, Richard Ratcliff, Widow Spratt, (of Isaac), James Spratt, John Spratt, John Smith, Larken Smith, Baptist Stell & J. Fenwick, William Shields, William Stuart, Charles Stuart, G. F. Stuart, Joseph Stafford, James Starr, James Shannon, William Stratton, Thomas Toler, Elkins Toler, William Toler, Jr., Squire Toler, Charles Toler, Humphrey Trent, Hilary Trent, Frederick Trent, Ja[illegible] Taylor, Thomas Taylor, Abner Vance, John H. Warner, Alexander Warner, Andrew Warner, Samuel Vanater, Joseph Walls, Henry Wallace, Joseph Workman, G. Works, Matthewson Wythe, Benjamin W. Wythe, Roel Ballard, Preston Perrys, Abner H. Lester, Joseph Lester.

All citizens of Virginia, and residing in the Western District thereof, who have been summoned, &c., of a plea of trespass in

ejectment, for that the said plaintiffs on the first day of July, 1859, was *possesses* in fee of a certain tract of land, granted by the Commonwealth of Virginia, by Robert Brooke, Esq., then Governor of said Commonwealth, by patent bearing date on the 23rd day of June, 1795, to Robert Morris, assignee of Wilson Cary Nicholas, containing five hundred thousand acres, then lying and being in the counties of Wythe and Russell, and now lying and being principally in the county of Logan, in said Western District of Virginia, the greater part thereof on Sandy and Guyandotte rivers and the waters thereof, and bounded as fol-

page 472.] lows, to-wit:

Beginning at two poplars and two chestnut trees on a branch of Guyandotte river, and about six miles from the mouth of Little War creek, a branch of Sandy river, being a corner of a survey of said Nicholas of four hundred and eighty thousand acres and a survey of three hundred and twenty thousand acres, made for said Nicholas and Jacob Kenney, with a line of the latter South thirty- three degrees, West six thousand seven hundred and twenty poles crossing a dividing ridge, and down War creek to the mouth, crossing Sandy river at six miles, crossing Panther creek at nine miles, and crossing several ridges to four white oaks on the Northwest bank of Knox's creek, and thence leaving said survey, West three thousand eight hundred and forty poles crossing said creek and some of the branches thereof, and along the spurs of the ridge dividing the waters of said creek and Peters creek, a branch of Sandy river, to three poplars and a sugar tree by a small branch of Knox's creek, thence North eight thousand poles, crossing Knox's creek at about four miles, Sandy river at twelve miles at the mouth of Turkey creek, and up said creek and the Northwest forks of the same, crossing Buffalo creek, Pigeon creek and the dividing ridge between Sandy and Guyandotte rivers and Gilbert's creek twice, a branch of Guyandotte to three sugar trees in a bottom of said river, and about twenty poles below the mouth of Gilbert's creek, and thence North ten degrees

East four thousand four hundred and fifty poles crossing Guyandotte river, several small branches and some ridges to pointers, thence East six thousand six hundred and twenty poles crossing Guyandotte river, and several branches thereof, to three sugar trees and a buckeye by a small branch of the same, being the Northwest corner of the survey of said Nicholas of four hundred and eighty thousand acres, and thence with the same, South six thousand eight hundred poles, crossing Huffs or Cain creek, to the beginnnig,

page 473.] And being so possessed thereof, the said defendants, afterwards, to-wit: on the said first day of July, 1859, entered into said premises, and they do and each of them doth withhold from the said plaintiffs the possession thereof, to the damage of said plaintiffs of fifty thousand dollars, and therefore this suit is brought, &c.

FIFTH COUNT.

page 474.] And also for this, that Josiah Randall, a citizen of the State of Pennsylvania, Ernest-Joseph-Auguste-Marie Bellot des Minieres, Alcide-Henry Bellot des Minieres, and Archille-Hilaire Olivari, and Auguste-Marie-Francois-Firmin-Voverre deSericourt, the last four being citizens of the Empire of France, *complaines* of Evermont Ward, Anthony Lawson, James Lawson, John Allen, Carr Allen, John H. Anderson, Warren Alderson, James Allison, Thomas Buchanan, Harvey Bailey, Archibald Bailey, Rufus Bailey, James Bailey, Thomas Bailey, Rhodes D. Ballard, Evan Bin, James Botchon, Moses Brown, James Brown, Hilary Blankenship, Isom Blankenship, Mary Blankenship, Henry Blankenship, Thomas E. and John R. Browning, Thomas E. Browning, John R. Browning, Jesse Browning, Nathaniel Browning, Oliver Browning, William Browning, Jr., John Burgess, Andrew Burgess, Calvers Burgess, Lewis Brewer, Hugh Bryan, Cutters Ballard, Jack Cline, Jacob Cline, William Cline, James Cline, Michael Cline, Jr., Christian Cline, David Cline, Thomas Cline, Lorenzo D. Chambers, James Chambers, James P. Christian, Parant Christian, Patterson Christian, Barney Christian, Richard

D. Coleman, Samuel Canterbury, John Cooke, William D. Cooke, William A. Cooke, James Cooke, Mitchell Cooke, Josiah Cooke, Thomas Cooke, William Collins, Sr., William Collins, Jr., William Dempsey, Joseph Dempsey, Mark Dempsey, John Dingess, Andrew Dempsey, Charles F. Dingess, James Ellis, Henry Ellis, Madison Ellis, Jacob D. Ellis, Loyd Ellis, Robert Elkins, Walter Elkins, William Elkins, John Ferrell, Paris Godfrey, Thomas Godfrey, Lewis G. Godfrey, A. LEWIS Godfrey, Levi Goare, Eli Goare, Joh Goare, Eli Hatfield, Ephriam Hatfield, Madison Hatfield, Jacob Hatfield, Thomas Hatfield, Valentine Hatfield, Joseph Holst, William Harvey, son of John, Patterson Harvey, Josiah Harvey, John Harvey, Henry Harvey, L. Ransom, H. Harvey, William Hinchman, Ulyses Hinchman, Floyd Hinchman, Lewis Hinchman, George Johnson, James Justice, Thomas Justice, Lewis B. Lawson, Pleasant Lester, Isaac Lester, Martin Luster, Philip Lambert, Garrett Lambert, Bird Lockhart, John Mullins, Thomas Mullins, Wm. Mullins, Thomas Mullins, Herndon

page 475.] Murphy, David Mountz, William Mountz, Alexander Mountz, Michael Mountz, Jackson Mountz, Peter Mountz, Charles Mountz, Mark Rey Mountz, Bannister Meadow, Frances Mitchell, Common Music, David Morgan, Isaac Morgan, Anthony Morgan, Floyd Morgan, Jordan T. Mitchell, William McDonald, Joseph McDonald, Gordon, McDonald, Wales McDonald, John C. McDonald, Edward McDonald, Stephen McDonald, William W. McDonald, Lewis McDonald, George W. Nighbert, Isaac New, James Perrys, Widow Perrys, Granville Perrys, William Perrys, David Patrick, Samuel Patterson, Gabriel Reffee, William Reffee, Peter Reffee, Cornelius Roberts, Jesse Roberts, Richard Ratcliff, Widow Spratt (of Isaac), James Spratt, John Spratt, John Smith, Larken Smith, Baptist Stell & J. Fenwick, William Shields, William Stuart, Charles Stuart, G. P. Stuart, Joseph Stafford, James Starr, James Shannon, William Stratton, Thomas Toler, Elkins Toler, William Toler, Jr., Squire Toler, Charles Toler, Humphrey Trent, Hilary Trent, Frederick Trent, James Taylor, Thomas Taylor, Abner Vance, John H. Warner, Alexander Warner, Andrew Warner, Samuel Vanater, Joseph

Walls, Henry Wallace, Joseph Workman, G. Works, Matthewson Wythe, Benjamin W. Wythe, Roel Ballard, Preston Perrys, Abner H. Lester, Joseph Lester.

All citizens of Virginia, and residing in the Western District thereof, who have been summoned, &c., of a plea of trespass in ejectment, for that the said plaintiffs on the first day of July, 1859, was *possesses* in fee of a certain tract of land, granted by the Commonwealth of Virginia, by Robert Brooke, Esq., then Governor of said Commonwealth, by patent bearing date on the 23rd day of June, 1795, to Robert Morris, assignee of Wilson Cary Nicholas, containing five hundred thousand acres, they lying and being in the counties of Wythe and Russell, and now lying and being principally in the county of Logan, in said Western District of Virginia, the greater part thereof on Sandy and Guyandotte rivers and the waters thereof, and bounded as follows,

page 476.] to-wit:

Beginning at two poplars and two chestnut trees on a branch of Guyandotte river, and about six miles from the mouth of Little War creek, a branch of Sandy river, being a corner of a survey of said Nicholas of four hundred and eighty thousand acres and a survey of three hundred and twenty thousand acres, made for said Nicholas and Jacob Kenney, with a line of the latter South thirty-three degrees, West six thousand seven hundred and twenty poles crossing a dividing ridge, and down War creek to the mouth, crossing Sandy river at six miles, crossing Panther creek at nine miles, and crossing several ridges to four white oaks on the Northwest bank of Knox's creek, and thence leaving said survey, West three thousand eight hundred and forty poles crossing said creek and some of the branches thereof, and along the spurs of the ridge dividing the waters of said creek and Peters creek, a branch of Sandy river, to three poplars and a sugar tree by a small branch of Knox's creek, thence North eight thousand poles, crossing Knox's creek at about four miles, Sandy river at twelve miles at the mouth of Turkey creek, and up said creek and the Northwest forks of the same, crossing Buffalo creek, Pigeon creek and the dividing ridge between Sandy and Guyandotte rivers and

Gilbert's creek, twice, a branch of Guyandotte, to three sugar trees in a bottom of said river, and about twenty poles below the mouth of Gilbert's creek, and thence North ten degrees East four thousand four hundred and fifty poles crossing Guyandotte river, several small branches and some ridges to pointers, thence East six thousand six hundred and twenty poles crossing Guyandotte river, and several branches thereof, to three sugar trees and a buckeye by a small branch of the same being the Northwest corner of the survey of said Nicholas of four hundred and eighty thousand acres, and thence with the same, South six thousand eight hundred poles, crossing Huffs or Cain creek, to the beginning;

page 477.] And being so possessed thereof, the said defendants afterwards, to-wit: on the said first day of July, 1859, entered into said premises, and they do and each of them doth withhold from the said plaintiffs the possession thereof, to the damage of said plaintiffs of fifty thousand dollars, and therefore this suit is brought, &c.

GEORGE W. SUMMERS,
SMITH & SON,
N. & H. FITZHUGH,
MILLER & NEWMAN
P. Q.

To

Take notice, that the foregoing declaration in ejectment against you and others, will be filed in the Clerk's office of the District Court of the United States, holden for the Western District of Virginia, at Charleston, Kanawha County, Virginia on the first Monday in January next, that being a rule day of said Court for the month of January, at which time and place you can attend, if you think proper.

Very respectfully, &c

GEORGE W. SUMMERS,
SMITH & SON,
N. & H. FITZHUGH,
MILLER & NEWMAN,

Attorneys for the plaintiffs named in the foregoing declaration.

October 1st, 1859.

page 478.] I served a copy of the within declaration of ejectment on the following persons in the following manner to wit James Justice Paris Godfrey Joseph Luster Larkin Smith—Wm. Riffee—Gabriel Riffee—Michael Cline—Rufus Bailey—James Allinson—Wm. Mullins by delivering to his daughter at his residence she being over the age of sixteen Henry Blankenship by delivering to his wife at his residence Wm Elkins by delivering to his wife at his residence all of which I delivered a copy to each of the *above* parties as set out and explain their purport.

Personally appeared before me a justice of the peace in and for the county of Logan Umphry Trent and made oath that he served a copy of the within declaration of ejectment on each of the above parties as set out.

Given under my hand & seal this 29 October 1859 sworn to before me.

JAMES P. CHRISTIAN *J. P.*

Virginia Kanawha County to wit:

This day William A. McMullin personally appeared before me a Notary Public in and for said county and made oath that he served the within declaration in ejectment, & notice attached thereto, by delivering printed copies thereof to the following parties, in person, at the time herein specified, respectively, to-wit. Lewis Hinchman on the 19 day of October 1859, William W. McDonald on the same day, Walter Elkins on the same day, Jordon D. Mitchell on the same day, Parant Christian on the same day, to Humphrey Trent on the 20th day of October 1859, to Widow Spratt on the day last aforesaid, James Spratt on the day last aforesaid to George Johnson on the 21st day of October 1859, to Pleasant Luster, Valentine Hatfield, James Perry, James Bailey, James Shannon, each on the 22nd day of October 1859, to James Cook, William D. Cook, Thomas Cook, Thomas Toler each on the 24th day of October 1859, to John Cook, Abner Vance, James Chambers each on the 25th day of October

1859, to Ulysses Hinchman, Widow Perrys James
page 479.] Christian on the 26th of October 1859, to Lorenzo Chambers, George Nibert, on the 27th day of October 1859. And that he served the said declaration and notice on the following persons, at the times & in the manner specified below, to wit to Loyd Hinchman by delivering a printed copy thereof, on the 19th day of October 1859 to his mother, at his usual place of abode, he not being found, and giving information of its purport to her, she being a member of his family and over the age of 16 years, to Preston Perrys, and Granville Perrys, on the said 19th day of October, 1859, by delivering printed copies thereof, to their wives respectively (and giving information of its purport to them) at their usual place of abode, the Presto & Granville not being found, and their wives being each over the age of 16 years. To Madison Ellis, Loyd Ellis, William Browning, Thomas Buchanan, by delivering printed copies thereof, on the 20th day of October 1859, to their wives respectively, at their usual places of *bove*, they not being found, and giving information of its purport to their respective wives, each of them being over the age of 16 years. To William Shields by delivering a printed copy thereof, on the 22nd day of October 1859, to his wife, at his usual place of abode, he not being found, and giving information of its purport to her, she being over the age of 16 years. To Charles Stuart and Josiah Cook, by delivering printed copies thereof, on the 24th day of October 1859, to their wives respectively at their usual places of abode, they not being found, and giving information of its purport to their wives respectively, they being each over the age of 16 years; To John H. Perrys on the 19th day of October 1859, by leaving a printed copy thereof posted at the front door of his usual place of abode, neither he, nor his wife, nor any white person a member of his family, being found there. To George D. Stuart on the 24th day of October 1859, by delivering a printed copy thereof to his daughter, at his
page 480.] usual place of abode, he not being found, and giving information of its purport to her, she being a member of his family, and over the age of 16 years.

To Thomas Bailey on the 24th day of October 1859 by delivering a printed copy thereof to his son at his usual place of abode, he not being found, and giving information of its purport to said son, he being a member of said Thomas family, and over the age of 16 years. To Eli Gore on the 27th day of October 1859, by delivering a printed copy thereof to his daughter, at his usual place of abode, he not being found, and giving information of its purport to her, she being a member of his family and over the age of 16 years. To Evermont Ward on the 28th day of October 1859, by delivering a printed copy thereof to ..... McKisney at the usual place of abode of the said Evermont, he not being found, and giving information of its purport to said McKisney, he being a white person over the age of 16 years, and the said Evermont being a boarder in his family. Given under my hand this 19th day of November 1859.

ALEX LAIDLEY, *N. P.*

page 481.] I, L. B. Dellicker, Clerk of the Circuit Court of the United States for the District of West Virginia, hereby certify that the foregoing is a true copy of the declaration in ejectment and notice, together with the returns of service endorsed thereon, in the case of Josiah Randall vs. Evermont Ward, et al., pending in said Court, at Charleston, in said District.

Given under my hand, and the seal of said Court, at Parkersburg, in said District, this 11th day of February, 1896.

L. B. DELLICKER, *Clerk.*
C. C. U. S., D. W. Va.

seal

page 482.] AFFIDAVIT OF DANIEL JUSTICE.

AFFIDAVIT OF DANIEL JUSTUS.

Daniel Justius No. 1

State of West Virginia,

County of Kanawha, SS:—

DANIEL JUSTUS being duly sworn deposes and says:

That he is forty-one (41) years of age; that he lives on Race

fork, about four and a half miles from the mouth of said creek, in Buchanan county, State of West Virginia; that he has lived on said Knox creek all his life, and is well acquainted with the country and the people on said creek; that on or about July or August, 1901, John A. Sheppard, a lawyer of Williamson, W. Va., in company with H. G. Charles of Knox creek, came to affiant's house and wanted to know where Mr. Raynolds, a surveyor, ran the north line of the Wilder or King survey, meaning the 500,000 acre Morris survey. Affiant told them he did not know exactly where he ran it but pointed out about where he heard it was; that said Shepard told affiant the King people had a corner there somewhere, and were praying not to find it, and wanted to know if affiant knew where it was, or where any old corners were; that if a corner was found there it would cut King out of everything meaning the land, so that there would be nothing worth following after for him. Said Sheppard laid down a map and said it was a map of the King or Wilder survey, and told affiant that the corner he (Sheppard) wanted to find was three poplars and a sugar tree, and explained that if there could be established anything of a corner there that belonged to the King or Wilder survey that it would lead them back at such a degree to Turkey and Gilberts Creek that

page 483.] there would be no land on the inside worth fighting for, and that they (King & Wilder) would quit the fight and make no further contest for the land, and wanted to know if affiant could not find something of that kind. Affiant first told said Sheppard that he could not find anything of a corner there, that affiant knew nothing of any corner thereabouts; said Sheppard repeatedly explained to affiant that if such a corner could be established, that it would cut the King survey off to such a fine point that there would be nothing left for King & Wilder to fight over, and would help the people of Knox creek and West Virginia. Affiant after listening to the conversation of said Sheppard, went to one side away from Sheppard and talked over the matter with H. G. Charles, and on thinking it over affi-

ant told said Sheppard that there was an old corner or marked trees that were cut down and were two poplars a lynn and a sugar tree; affiant told said Sheppard that there was an old sugar stump there once, but it was rotted away and could not be found, but affiant now says there never was an old sugar stump there to his knowledge; said Sheppard said it did not matter much for people in the old time called trees as being one kind when they were another, that they would call a lynn a poplar just the same. Affiant pointed out to said Sheppard about where the trees were. The next day after the first time said Sheppard and Charles were there, Sheppard and C. W. Campbell of Huntington, Claud Gaujot, a surveyor Williamson, and Reese Davis and said Harve Charles came to affiant's house again; they showed affiant a small box which they said was a thing to take pictures, and they were going to take a picture of the stumps of the trees affiant had pointed out the day before as a corner; they asked affiant to take them to the spot where he said the stumps were, and affiant and the said parties went to the place. Said Sheppard and Campbell and Gaujot wanted to know who affiant could get to say that the said stumps were a corner, and affiant told them that he could get some men to say so, and said Sheppard and Campbell told affiant to go and get them, and thereupon affiant sent to Riley Luster, William Anderson Luster and Jack Luster, and brought them to the place where the stumps were; affiant had explained to these men what was wanted by said Sheppard and Campbell with reference to establishing a corner, and that if such a corner could be established, King and Wilder would quit the fight. These men stated to said Sheppard and Campbell that they helped to cut the trees down and that there were marks on them indicating a corner. Said Sheppard and Campbell said to them that if they would establish a corner there it would end the fight for their land. Said Gaujot made measures of the distance between the stumps and pictures were taken of them by said parties .

page 484.]

That in about four or five days said Sheppard and Campbell

came again to affiant's house, under *as* agreement with affiant made at the second meeting for him *tp* get some more witnesses; that affiant had in the meantime gone to his uncle, Simeon Justus, who he knew would help, and he and affiant's brother, Morgan Justus, both were at his house when said Sheppard and Campbell came; affiant told said Sheppard and Campbell that said Simeon Justus had known the corner for thirty-five years, but which affiant now says was not true, and that when said Simeon Justus said to said Sheppard and Campbell that he had known the corner for thirty-five years, he was stating that which was not true, and because affiant had procured him to make said statement.

That affiant now says that when he told said Sheppard and Campbell that the said trees near his house, about one hundred yards from said house, north of same, and stated to said Sheppard and Campbell that they were corner trees or were marked as corner trees or that he had any knowledge of any reputation of there being a corner to any survey or to the King or Wilder suvey, that it was and is not true; that affiant never saw any marks on said trees; that the one of the said trees which was from said stumps is still at this day lying on

page 485.] the ground in the hollow; that one of them was split by affiant into rails and fire wood and had no marks on it; that affiant has no knowledge of any trees being marked as a corner of said King or Wilder survey or said Morris 500,000 acre survey any where on Knox creek; that it is entirely untrue so far as the knowledge of affiant is concerned that the trees or stumps pointed out to said Sheppard and Campbell as corner trees were in fact corner trees or were in fact marked at all as corner trees, and that affiant pointed out to said Sheppad and Campbell said trees because of the fact that the conversation of said Sheppard and Campbell led him to believe that it would be a good thing to find a corner there in order as said Sheppard and Campbell told affiant, to cut the survey down so that King & Wilder would not have any land worth fighting for.

That affiant was employed and went with Sid Stone, a surveyor of Logan County, in the month of September or October, 1901, to do some surveying in running a line from the said stumps on Race fork to Turkey creek; that during the running of line said Stone had a chestnut oak blocked on the lower side of Guss fork on the ridge a little above Josh Justus'; that said Stone told affiant he blocked the tree to see about the marks; that affiant saw no marks but said Stone said there were marks; that said tree from which said block was taken was about one hundred yards (100) from the line said Stone was running; that a part of the business of affiant in helping to run said line was to hunt for marked trees, that would answer the purpose of the line said Stone was running, though affiant found many marked trees as indeed the woods are full of such marked trees.

his
DANIEL x JUSTUS
mark

J. W. N. BLANKENSHIP

Taken, subscribed and sworn to before me a Notary Public in and for the county and state aforesaid this 21st day of April, 1902, as witness my hand and official seal.

page 486.]

R. P. FLOURNEY
Notary Public of Kanawha County, West Virginia.

(R. P. FLOURNEY)
(KANAWHA COUNTY, W. VA)
(NOTARY PUBLIC)

pge 487.] DEPOSITION OF JOHN S. MARCUM.

State of West Virginia
vs.) *In Chancery.*
Henry C. King.

And now this 20th day of June, 1905, parties hereto met at the

office of the commissioner in the city of Huntington, Cabell County, West Virginia, and proceedings herein were resumed.

PRESENT: C. W. CAMPBELL, ATTORNEY FOR CONTESTING DEFENDANTS.
L. C. ANDERSON, ATTORNEY FOR THE TURKEY CREEK LAND CO.
JUDGE M. F. STILES, ATTORNEY FOR THE DEFENDANT, HENRY C. KING.

J. S. MARCUM witness introduced by the defendant, King, after being first duly sworn, upon oath, deposes and says as follows:

(EXAMINED BY JUDGE STILES.

Q. Were you counsel for the State of West Virginia vs. Henry C. King and others, when the same was pending in the Circuit Court of Logan County, at and prior to the filing of the so called Fifth Amended Bill?

A. Mr. J. S. Miller a practicing attorney at Logan Court House, and myself represented, as attorneys, the Commissioners of school lands of Logan County, and the case referred to was sent from the Circuit Court of Wyoming County to the Circuit Court of Logan County, and we were directed by an order entered in this cause to take charge of it, and represent the interests of the State therein, which we attempted to do.

Q. Please state the circumstances attending the preparation and filing of the Fifth Amended Bill, how it was first brought to your attention and what was done in reference thereto?

page 488.] A. I know nothing as to the preparation of the bill as I did not prepare it and was not present when it was prepared. My first knowledge of it was at the July term of the Circuit Court of Logan County, at which it was filed. The bill was shown me on Sunday before the Court commenced at the hotel at which I was stopping by Mr. Miller, and I think, Mr. John A. Sheppard, one of the attorneys

representing certain parties now interested in the cause, with the request that the same should be filed on the motion of the State. An inspection of the bill revealed the fact that there was a large number of new defendants made therein, and, upon thinking the matter over, I declined to take the responsibility of asking to have the bill filed and bringing in these defendants. This conclusion was reached after the consultation with Mr. J. H. Hinchman, who was then the Commissioner of school lands of Logan County, and Mr. J. S. Miller who was associating with him in representing the Commissioners of school lands of Logan County. I concluded that our course in the matter would be to call the courts attention to the fact that this bill had been prepared and submitted to us with the request to file the same, and without any recommendation or suggestion from us in regard to it, ask the court to direct by its decree whether the bill should be filed or not. This we did on Tuesday morning the second day of that term of court. The courts attention was called to the fact that the bill had been prepared and submitted to us with the request to file the same and we asked the courts advice or direction as to whether the same *sould* be done or not. The matter was then *disscussed* in the court by Judge M. F. Stiles, representing Henry C. King, who opposed the filing of the bill, and as I now recall favored by Mr. C. W. Campbell and Judge Thos. H. Harvey, who was advocating the propriety and necessity of filing the bill, and after a somewhat elaborate argument for and against the proposition, the court directed the bill to be filed, which was done.

Q. What reason, if any, was assigned by counsel favoring the filing of the bill, in support of the proposition that it should be filed and the persons therein mentioned be brought into the courts?

A. I cannot recall all the reasons offered by way of argument but as I now recall, the strongest reason that they urged was that these defendants might be brought into State Court and litigate their rights in the State Court and be saved from being dragged

into the Federal Courts to try their rights. I think this matter was most strongly urged by Judge Harvey.

Q. State what was said, if anything, by the attorneys who requested you to file this Fifth Amended Bill as to their *reaons* for wanting the same filed?

A. The special reason urged by the parties desiring this bill to be filed was that it would bring in the parties mentioned in the bill as defendants and give them an opportunity to contest King's right to redeem the Morris Grant and thereby enable them to litigate the title to their land with King in the State Courts and avoid being compelled to litigate it with King in the Federal Courts.

page 489.] Q. Was any argument offered or any request made on the part of yourself or Mr. Miller that the bill be filed?

A. We were talking the matter over between ourselves and with Mr. Hinchman, and not knowing the wishes or desires of the large number of defendants named in this bill, we concluded that our course *shuld* be to let the matter be settled by the court, leaving the court to take its own course without any suggestion on our part whatever.

Q. Do you know whether any question was made with regard to meeting the expense of maturing the bill or issuing the process thereon?

A. Yes sir after the court had determined to direct the filing of the bill, Judge Doolittle, who was Judge of the court at that time, and I had a talk about it at the side door of the hotel, and I *caled* his attention to the fact that there were a large number of defendants scattered over the Counties of Logan, Mingo, Wyoming and McDowell as well as quite a number of non-residents and that the expense of maturing the bill would be considerable, and that the Commissioner of school lands of that County had no funds in his hand with which to pay the expense and his reply to me was that he could see Mr. Campbell and call his attention to the fact and require him and those interested with

him to meet that expense, which he afterwards told me they had agreed to do.

Q. Was the bill, when it was afterwards filed, circulated among the members of the bar favoring the filing of said Amended Bill at the time the argument was in progress?

A. The bill was submitted to the court by either myself or Mr. Miller, I think myself, on the morning that the argument commenced, but I cannot say that any lawyer read it. It was very elaborately discussed by counsel favoring it and counsel opposing it but I don't know whether they read it or not.

Q. State whether or not any counsel opposed or spoke in opposition of the filing of the bill except myself, as counsel for Mr. King?

A. No sir there were no other counsel excepting Judge M. F. Stiles who offered any opposition to the filing of the bill.

Q. Do I understand you to say that no argument was made on behalf of the State?

A. No sir no one made any argument in favor of the State. We simply informed the court that the bill had been submitted to us with the request that the same be filed. And informed them of our unwillingness of taking the responsibility of making these parties defendants without any knowledge as to their desires in this matter and we asked the court to direct as to the filing of the bill and direct us as to what we should do in the circumstances.

(TURKEY CREEK LAND COMPANY, BY COUNSEL, OBJECTS TO THE WHOLE OF THE FOREGOING PROPOSITION AS IMMATERIAL AND IRRELEVANT.)

And further this deponent saith not.

JOHN S. MARCUM

page 490.] State of West Virginia

Cabell County, to-wit:

I, John T. Graham, Commissioner in Chancery of the Circuit Court of said county do certify that the foregoing deposition of John S. Marcum was duly taken by me after the witness had been

duly sworn in the manner and at the place as set forth in the caption hereof.

I further certify that said deposition was taken in the chancery cause of State of West Virginia vs. Henry C. King et als, now pending in the Circuit Court of Marion County, West Virginia and at the time of taking the same the said case was pending before me, as commissioner, under a decree of reference entered therein.

Given under my hand this 8th. day of July 1905.

JOHN T. GRAHAM,
Commissioner in Chancery.

page 491.] The report and map of surveyor W. C. Reddy; the affidavit of Reese Davis; the agreement between V. A. Wilder and Daniel Justice; the grant of 1117 acres to White and Watkins, and sundry other documents referred to in these proceedings are not found in the files of this cause.

Clerk.

page 492.] ORDER FILING PAPER OF BRIGHT, TRUSTEE.

State of West Virginia.

At a Circuit Court held in and for the County of Marion, at the Court-house thereof, on the 1st day of June, 1905, the following decree was entered:

State of West Virginia,
vs.) *In Chancery.*
Henry C. King

This day came ARTHUR L. BRIGHT, Trustee, one of the defendants in this case, by his attorneys, C. W. Campbell, John A. Sheppard and Edward C. Lyon, and filed in open Court a duly certified copy of the following letter patent, issued by the Governor of Virginia, to-wit:

A patent issued by the Governor of Virginia, bearing date the 2nd day of August, 1858, to John Allen and Evermont Ward,

for 4000 acres of land situate on the ridge between Pigeon Creek and the Rock fork of same waters of the Tug Fork *fork* of Sandy River.

Thereupon the said Arthur D. Bright, trustee, by his attorneys, gave notice in open Court that he would, at the expiration of thirty (30) days from this date, move the Court to dismiss from this suit all the lands described in the aforesaid letter patent.

page 493.] ORDER FILING PAPERS OF WM. H. LAWSON, TRUSTEE.

State of West Virginia
vs.) *In Chancery.*
Henry C. King et al.

This day came William H. Lawson, trustee, one of the defendants in this case, by his attorneys, C. W. Campbell, John A. Sheppard and Edward C. Lyon, and filed in open Court a duly certified copy of the following conveyance or instrument, executed by the Commissioner of School Lands of Logan County, to-wit:

A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 12th day of February, 1889, conveying or purporting to *cinvey* to Joseph Simpkins a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) on the Sam Kanada branch of Pigeon Creek of Sandy River described by metes and bounds, and as containing 176 acres.

And said defendant also filed in open court a duly certified coy of the following letter patent, issued by the Governor of Virginia, to-wit:

A patent isued by the Governor of Virginia, bearing date the 1st day of August, 1851 to Samuel Canada, for 18 acres of land situate on the Turnip Patch branch of Beech of Sandy River.

Thereupon the said William H. Lawson, Trustee, by his attorneys, gave notice in open Court that he would, at the exiration of

thirty (30) days from this date, move the Court to dismiss from this suit all the lands described in aforesaid deed or conveyance and in the aforesaid patent.

page 494.] ORDER FILING PAPERS OF EGBERT MILLS, TRUSTEE.

State of West Virginia,
vs.) *In Chancery.*
Henry C. King

This day came Elbert Mills, Trustee, one of the defendants, in this case, by his attorneys, C. W. Campbell, John A. Shepherd and Edward C. Lyon, and filed in open Court duly certified copies of the following letters patent, issued by the Governor of Virginia, to wit:

1. A patent issued by the Governor of Virginia, bearing date the 1st day of October, 1859, to Thomas E. Browning and John R. Browning, for 43 acres of land situate on Spring fork of the Right-hand fork of Ben Creek.

2. A patent issued by the Governor of Virginia, bearing date the 2nd day of August, 1852, to Joseph Hatfield, for 54 acres of land situate on the Spring Fork of the Right-hand fork of Ben Creek.

3. A patent issued by the Governor of Virginia bearing date the 2nd day of August, 1858, to Warren M. Alderson, for 2740 acres of land, situate on the Right-hand fork of Ben Creek of Sandy Run.

And said defendant also filed in open Court duly certified copies of the following conveyances or instruments, executed by the Commissioner of School Lands of Logan County, to wit:

1. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 20th day of October, 1885, conveying or purporting to convey to William Straton, two certain tracts or parcels of land situate, lying and being in the County of Logan; (now Mingo) one on

Thackers fork of Pigeon Creek, described by metes and bounds, and as containing 181 acres, and the other on Pigeon
page 495.] Creek, described by metes and bounds, and as containing 301 acres.

2. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 5th day of May, 1886, conveying or purporting to convey to William Straton, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Pigeon Creek, and Grant's branch of the same, described by metes and bounds, and as containing 452 acres.

3. A conveyance or instrument executed by Ulysses Hinchman, Commissioner of School Lands of Logan County, bearing date the 2nd day of June, 1881, conveying or purporting to convey to Thomas H. Duty, a certain tract or parcel of land situate, lying and being in the County of Logan, and on Main Island Creek, described by metes and bounds, and as containing 79 acres.

4. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 12th day of March, 1889, conveying or purporting to convey to Alexander Trent, a certain tract or parcel of land situate, lying and being in the County of Logan (now Mingo) and on Spring fork of Ben Creek, described by metes and bounds, and as containing 202 acres.

Thereupon the said Egbert Mills, Trustee, by his attorney, gave notice in open Court that he would, at the expiration of thirty (30) days from this date, move the court to dismiss from this suit all the lands described in each and all of the aforesaid letters patent and conveyances or instruments.

page 496.] ORDER FILING PAPERS OF ARTHUR D. BRIGHT.

State of West Virginia

vs.) *Chancery.*

Henry C. King et al.

This day came Arthur D. Bright, one of the defendants in this

thirty (30) days from this date, move the Court to dismiss from this suit all the lands described in aforesaid deed or conveyance and in the aforesaid patent.

page 494.] ORDER FILING PAPERS OF EGBERT MILLS, TRUSTEE.

State of West Virginia,
vs.) *In Chancery.*
Henry C. King

This day came Elbert Mills, Trustee, one of the defendants, in this case, by his attorneys, C. W. Campbell, John A. Shepherd and Edward C. Lyon, and filed in open Court duly certified copies of the following letters patent, issued by the Governor of Virginia, to wit:

1. A patent issued by the Governor of Virginia, bearing date the 1st day of October, 1859, to Thomas E. Browning and John R. Browning, for 43 acres of land situate on Spring fork of the Right-hand fork of Ben Creek.

2. A patent issued by the Governor of Virginia, bearing date the 2nd day of August, 1852, to Joseph Hatfield, for 54 acres of land situate on the Spring Fork of the Right-hand fork of Ben Creek.

3. A patent issued by the Governor of Virginia bearing date the 2nd day of August, 1858, to Warren M. Alderson, for 2740 acres of land, situate on the Right-hand fork of Ben Creek of Sandy Run.

And said defendant also filed in open Court duly certified copies of the following conveyances or instruments, executed by the Commissioner of School Lands of Logan County, to wit:

1. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 20th day of October, 1885, conveying or purporting to convey to William Straton, two certain tracts or parcels of land situate, lying and being in the County of Logan; (now Mingo) one on

Thackers fork of Pigeon Creek, described by metes and bounds, and as containing 181 acres, and the other on Pigeon
page 495.] Creek, described by metes and bounds, and as containing 301 acres.

2. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 5th day of May, 1886, conveying or purporting to convey to William Straton, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Pigeon Creek and Grant's branch of the same, described by metes and bounds, and as containing 452 acres.

3. A conveyance or instrument executed by Ulysses Hinchman, Commissioner of School Lands of Logan County, bearing date the 2nd day of June, 1881, conveying or purporting to convey to Thomas H. Duty, a certain tract or parcel of land situate, lying and being in the County of Logan, and on Main Island Creek, described by metes and bounds, and as containing 79 acres.

4. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 12th day of March, 1889, conveying or purporting to convey to Alexander Trent, a certain tract or parcel of land situate, lying and being in the County of Logan (now Mingo) and on Spring fork of Ben Creek, described by metes and bounds, and as containing 202 acres.

Thereupon the said Egbert Mills, Trustee, by his attorney, gave notice in open Court that he would, at the expiration of thirty (30) days from this date, move the court to dismiss from this suit all the lands described in each and all of the aforesaid letters patent and conveyances or instruments.

page 496.] ORDER FILING PAPERS OF ARTHUR D. BRIGHT.

State of West Virginia

vs.) *Chancery.*

Henry C. King et al.

This day came Arthur D. Bright, one of the defendants in this

case, *ry* his attorneys, C. W. Campbell, John A. Sheppard and Edward C. Lyon, and filed in open Court duly certified copies of the following letters patent, issued by the Governor of Virginia, towit.

1. A patent issued by the Governor of Virginia, bearing date the 1st day of February, 1859, to Aly Hatfield, for 330 acres of land situate on the Left-hand fork of Ben Creek.

2. A patent issuer by the Governor of Virginia, bearing date the 1st day of February, 1859, to Aly Hatfield, for 450 acres of land situate on the Left-*habd* fork of Ben Creek, waters of the Tug Fork of Sandy River.

3. A patent issued by the Governor of Virginia, bearing date the 1st day of February, 1859, to Aly Hatfield, for 72 acres of land situate on the Right-hand fork of the Left- hand fork of Ben Creek of Sandy River.

4. A patent issued by the Governor of Virginia, bearing date the 2nd day of February, 1852, to Arthur White, for 35 acres of land situate on the Elk fork of Pigeon Creek of Sandy River.

5. A patent issued by the Governor of Virginia, bearing date the 30th day of September, 1848, to Arthur White, for 49 acres *if* land situate on the Elk Fork of Pigeon Creek of Sandy River.

6. A patent issued by the Governor of Virginia, bearing date the 2nd day of February, 1852, to Arthur White, for 11 acres of land situate on Elk Fork of Pigeon Creek.

7. A patent issued by the Governor of Virginia, bearing date the 30th day of September, 1843, to Henry Farley, for 20 acres of land situate on Dans branch of Sandy River.

page 497.] 8. A patent issued by the Governor of Virginia, bearing date the 31st day of March, 1846, to Ephraim Hatfield, for 45 acres of land situate on the Double Camp fork of Mates Creek of Sandy River .

9. A patent issued by the Governor of Virginia, bearing date the 30th day of June, 1845, to John Passley, for 20 acres of land situate on the 5 mile fork of the Elk fork of Pigeon Creek, waters of Sandy River.

10. A patent issued by the Governor of Virginia, bearing date

the 25th day of August, 1835, to James White, Jun., for 75 acres of land situate on the Elk fork of Pigeon, waters of Sandy River.

And said defendant also filed in open Court a duly certified copy of the following letter patent, issued by the Governor of West Virginia, to wit:

A patent issued by the Governor of West Virginia, bearing date the 3rd day of February, 1871, to George R. C. Floyd, for 6,000 acres of land situate on the waters of Pigeon and Island creeks.

And said defendant also filed in open Court duly certified copies of the following conveyances or instruments, executed by the Commissioner of School lands of Logan County, to wit:

1. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 14th day of March, 1889, conveying or purporting to convey to Joseph Hatfield, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) on Ben Creek, a branch of Sandy river, described by metes and bounds, and as containing 140 acres.

2. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 29th day of May, 1883, conveying or purporting to convey to Floyd Hatfield a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) on Mates Creek, a branch of Tug Fork of Sandy River, described by *meets* and bounds, and as containing 95¼ acres.

page 498.]

3. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 12th day of June, 1883, conveying or purporting to convey to Ephriam Hatfield, a certain tract or parcel of land situate, lying and being in the county of Logan, (now Mingo) and on Beech Creek of Sandy River, described by metes and bounds, and as containing 114 acres.

4. A certain conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 4th day of June, 1883, conveying or purporting to convey

to Richard Canada, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Beech Creek, a branch of Sandy River, described by *meets* and bounds, and as containing 191½ acres.

5. A conveyance or instrument executed by Ulysses Hinchman, Commissioner of School Lands of Logan County, bearing date the 2nd day of June, 1881, conveying or purporting to convey to Richard Canada, a certain tract or parcel of land situate, lying and being in the County of Logan (now Mingo) and on Beech Creek of Sandy River, described by *meets* and bounds, and as containing 140 acres.

A conveyance or instrument executed by Ulysses Hinchman, Commissioner of School Lands of Logan County, bearing date the 2nd day of June, 1881, conveying or purporting to convey to Richard Canada, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Beech Creek of Sandy River, described by *meets* and bounds, and as containing 187 acres.

page 499.]

7. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 13th day of October, 1887, conveying or purporting to convey to Martha Chaflin, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the Middle Fork of Elk Creek of Pigeon Creek, described by *meets* and bounds, and as containing 240 acres.

8. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 8th day of October, 1887, conveying or purporting to convey to Martha Chafin, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the ridge between the Right-hand fork of Elk and the Middle fork of Elk, and the Rock House fork of Pigeon, described by *meets* and bounds, and as containing 363 acres.

9. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the

12th *fay* of March, 1889, conveying or purporting to convey to H. P, Duty, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Pigeon Creek and Grant's branch of same, described by *meets* and bounds, and as containing 505 acres.

10. A conveyance or instrument executed by Ulysses Hinchman, Commissioner of School Lands of Logan County, bearing date the 5th day of April, 1871, conveying or purporting to convey to Thomas B. Farley, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) on the waters of Elk fork of Pigeon Creek, described by *meets* and bounds, and as containing 328 acres.

page 500.] 11. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 12th day of April, 1888, conveying or purporting to convey to William A. Farley, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the Right Hand Fork of Elk fork of Pigeon Creek, described by *meets* and bounds and as containing 89 acres.

12. A conveyance or instrument executed by Ulysses Hinchman, Commissioner of School Lands of Logan County, bearing date the 5th day of April, 1871, conveying or purporting to convey to William A. Farley, two certain tracts or parcels of land situate, lying and being in the County of Logan (now Mingo) and on the Elk Fork of Pigeon Creek and the waters thereof, described by *meets* and bounds, and as containing 52 acres and 235 acres respectively.

Thereupon the said Arthur D. Bright, by his attorneys, gave notice in open Court that he would, at the expiration of thirty (30) days from this date, move the court to dismiss from this suit all the lands described in each and all of the aforesaid letters patent and *conveances* or instruments.

page 501.] ORDER FILING *PAPTER* OF EGBERT MILLS.

State of West Virginia
vs.) *In Chancery.*
Henry C. King et al.

This day came Egbert Mills, one of the defendants in this case, by his attorney, C. W. Campbell, John a Sheppard and Edward C. Lyon, and filed in open Court duly certified copies of the following letters patent, issued by the Governor of Virginia, to wit:

1. A patent isued by the Governor of Virginia, bearing date the 3rd day of December 1844, to Jacob D. Ellis and Elijah Ferrell, for 63 acres of land situate on the head of Pigeon Creek of Sandy River.

2. A patent issued by the Governor of Virginia, bearing date the 1st day of December, 1855, to Jesse Browning, for 80 acres of land situate on the South side of Pigeon Creek.

3. A patent issued by the Governor of Virginia, bearing date the ——— day of ——————— 18——, to Aly Hatfield, Jr., for 150 acres of land situate on Ben Creek of Sandy River.

4. A patent issued by the Governor of Virginia, bearing date the 3rd day of December, 1847, to Joseph Hatfield, Jr., for 30 acres of land situate on Ben Creek, waters of Sandy River.

5. A patent isued by the Governor of Virginia, bearing date the 15th day of June, 1821, to James Muncy, for 50 acres of land situate on Big Pigeon Creek, a branch of the left-hand fork of Sandy River.

And said defendant also filed in open Court a duly certified copy of the following letters patent, issued by the Governor of West Virginia, to wit:

page 502.] 1. A patent issued by the Governor of West Virginia, bearing date the 28th day of June, 1873, to Evermont Ward and Hoffman Allen and Louisa C. Allen, children and devisees of John Allen, deceased, for 700 acres of land situate on the lower side of Gilbert Creek of Guyandotte River.

2. A patent issued by the Governor of West Virginia, bearing date the 29th day of May, 1884, to the heirs of Jesse Browning, deceased, for 432 acres of land situate on the left hand fork of Ben Creek, a branch of Sandy River.

And said defendant also filed in open Court duly certified copies of the following conveyances or instruments executed by the Commissioner of School Lands of Logan County, to wit:

1. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 12th day of March, 1889, conveying or purporting to convey to James Hatfield, a certain tract or parcel of land situate, lying and being in the County of Logan, and on Ben Creek of Sandy River, described by *meets* and bounds, and as containing 470 acres.

2. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 29th day of July, 1883, conveying or purporting to convey to James M. Laidley, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Mate Creek, a branch of Sandy River, described by *meets* and bounds and as containing 141 acres.

3. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 16th day of March, 1889, conveying or purporting to convey to Madison Hatfield, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the South side of Pigeon Creek next to Mate, described by *meets* and bounds, and as containing 229 acres.

page 503.]

4. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 24th day of August, 1888, conveying or purporting to convey to L. D. Varney, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the Rock House fork of Pigeon Creek, described by *meets* and bounds, and as containing 114 acres.

5. A conveyance or instrument executed by William Straton,

Commissioner of School Lands of Logan County, bearing date the 1st day of March, 1882, conveying or purporting to convey to Henry C. Varney, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the Rock House Fork of Pigeon Creek, a branch of Sandy River, described by *meets* and bounds and as containing 99 acres.

6. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 25th day of March, 1889, conveying or purporting to convey to Jacob Ferrell, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo), and on the Little Muncy Fork of Pigeon Fork of Pigeon Creek, described by *meets* and bounds, and as containing 432 acres.

7. A conveyance or instrument executed by L. D. Chambers, Commissioner, of School Lands of Logan County, bearing date the 25th day of March 1889, conveying or purporting to convey to Jacob Ferrell, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the South side of the Big Muncy branch of Main Creek, described by *meets* and bounds, and as containing 457 acres.

page 504.] 8. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 25th day of March, 1889, conveying or purporting to convey to Jacob Ferrell, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the Big Muncy Fork of Pigeon Creek, described by *meets* and bounds, and as containing 370 acres.

9. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 20th day of October, 1885, conveying or purporting to convey to Moses Mounts, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Gilberts Creek, described by *meets* and bounds, and as containing 112 acres.

10. A conveyance or instrument executed by L. D. Chambers,

Commissioner of School Lands of Logan County, bearing date the 16th day of February, 1889, conveying or purporting to convey to Floyd Music, a certain tract or parcel of land situate, lying and being in the county of Logan, (now Mingo) and on the Slick Rock branch of Pigeon Creek, described by *meets* and bounds, and as containing 428 acres.

11. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 16th day of February, 1889, conveying or purporting to convey to Floyd Music, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the Roves Branch of Pigeon Creek, described by *meets* and bounds, and as containing 226 acres.

12. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 8th day of March, 1887, conveying or purporting to convey to L. P. Smith and Emma Smith, two certain tracts or parcels of land situate, lying and being in the County of Logan, (now Mingo) and on the Straight branch of Mate Creek, described by *meets* and bounds and as containing 103 acres and 61 acres *respectfully*.

page 505.]

13. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 10th day of November, 1884, conveying or purporting to convey to Enoch Gibson, a certain tract or parcel of land situate, lying and being in the county of Logan (now Mingo) and on the Big Fork ridge of Ben Creek, a branch of Sandy River, described by *meets* and bounds and as containing 372 acres.

14. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 26th day of July, 1886, conveying or purporting to convey to Alexander Trent, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Gilberts Creek, described by *meets* and bounds, and as containing 205 acres.

Thereupon the said Egbert Mills, by his attorneys, gave notice in open Court that he would, at the expiration of thirty (30) days from this date, move the Court to dismiss from this suit all the lands described in each and all of the aforesaid letters patent and conveyances or instruments.

page 596.] ORDER FILING PAPERS OF WM. KRONENWETT.

State of West Virginia

vs.) *In Chancery.*

Henry C. King et al.

This day came William Kronenwett, one of the defendants in this case by his *attorney*, C. W. Campbell, John A. Sheppard and Edward C. Lyon, and filed in open Court duly certified copies of the following letters patents, issued by the Governor of Virginia, to wit:

1. A patent issued by the Governor of Virginia, bearing date the 1st day of May, 1855, to Alexander Mounts, for 60 acres of land situate on the Foundation fork of Beech Creek of Sandy River.

2. A patent issued by the Governor of Virginia, bearing date the 1st day of August, 1851, to Alexander Mounts, for 60 acres of land situate on the Double Camp fork of Beech Creek of Sandy River.

3. A patent issued by the Governor of Virginia, bearing date the 2nd day of August, 1858, to Warran Alderson, for 150 acres of land situate on Beech Creek of Sandy River,

4. A patent issued by the Governor of Virginia, bearing date the 1st day of November, 1859, to Richard Ratcliff, for 1340 acres of land situate on Stafford's branch, Laurel's branch and Grant's branch.

5. A patent issued by the Governor of Virginia, bearing date the 30th day of June, 1847, to William Cline, for 74 acres of land situate on Sandy River.

6. A patent issued by the Governor of Virginia, bearing date

the 1st day of March, 1855, to Warren Alderson, for 289 acres of land situate on the Upper side of Beech Creek of Sandy River.

7. A patent issued by the Governor of Virginia, bearing date the 1st day of September, 1856, to Warren M. Alderson, for 33 acres of land situate on Beech Creek of Sandy River,

page 507.] 8. A patent issued by the Governor of Virginia, bearing date the 15th day of June, 1821, to Thomas Smith, for 15 acres of land situate on the left-hand fork of Sandy River.

9. A patent issued by the Governor of Virginia, bearing date the 1st day of February 1859 to Henry Varney, for 35 acres of land situate on the Rock House fork of Pigeon Creek.

10. A patent issued by the Governor of Virginia, bearing date the 1st day of September 1856, to Ralph Steel for 22 acres of land situate on the Left-hand fork of the three forks of Island Creek.

11. A patent issued by the Governor of Virginia, bearing date the 1st day of December, 1851, to James Brewster, for 55 acres of land situate on the Rock House fork of Pigeon Creek.

12. A patent issued by the Governor of Virginia, bearing date the 2nd day of August 1858, to Pleasant Chaffin, for 154 acres of land situate on the Rock House of Pigeon Creek.

13. A patent isued by the Governor of Virginia, bearing date the 1st day of January, 1862, to George W. Duty, for 350 acres of land situate on the Rock House fork of Pigeon Creek, waters of Sandy River.

14. A patent issued by the Governor of Virginia, bearing date the 31st day of August, 1843, to Andrew Varney, for 23 acres of land situate on the Rock House of Pigeon Creek, waters of Sandy River.

15. A patent issued by the Governor of Virginia, bearing date the 2nd day of July, 1855, to Levi Vance for 54 acres of land situate on the Browning fork of Horsepen fork of Gilberts, and the Left-hand fork of three forks of Island Creek.

And said defendants also filed in open Court a duly certified

copy of the following letter patent, issued by the Governor of Virginia, to wit:

page 508.] A patent issued by the Governor of West Virginia, bearing date the 5th day of March, 1875, to Levi Vance and L. D. Steele, for 400 acres of land situate on the Left-hand fork of Conley fork of Island Creek of Guyandotte River.

And said defendant also filed in open court duly certified copies of the following letters patent, issued by the Governor of Virginia, to wit:

16. A patent issued by the Governor of Virginia bearing date the 1st day of August, 1836, to Andrew Varney, for 50 acres of land, situate on Rock House fork of Big Pigeon Creek.

17. A patent isued by the Governor of Virginia bearing date the 1st day of February, 1855, to Andrew Varney, for 50 acres of land, situate on Rock House fork of Pigeon Creek.

18. A patent issued by the Governor of Virginia bearing date the thirtieth day of June, 1845, to John Lawson for 25, acres on Sandy River and Beech Creek.

And said defendant also filed in open Court duly certified copies of the following conveyances or instruments, executed by the Commissioner of School lands of Logan County, to wit:

1. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 22nd day of October, 1886, conveying or purporting to convey to Martha Steel, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Beech Creek a branch of Sandy River, described by *meets* and bounds, and *an* containing 87 acres.

2. A conveyance or instrument executed by William Straton, Commissioner of School Lands of Logan County, bearing date the 1st day of May, 1882, conveying or purporting to convey to Joseph Simkins, a certain tract or parcel of land situate, lying and being in the County of Logan (now Mingo) *an* on

page 509.] Beech Creek, a branch of Sandy River, described by *meets* and bounds, and as containing 63 acres.

3. A conveyance or instrument executed by William Straton, Commissioner of School Lands of Logan County, bearing date the 1st day of May, 1882, conveying or purporting to convey, to Joseph Simpkins and Samuel Simpkins, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Beech Creek of Sandy River, described by *meets* and bounds, and as containing 58 acres.

4. A conveyance or instrument executed by U. B. Buskirk, Commissioner of School Lands of Logan County, bearing date the 10th day of June, 1890, conveying or purporting to convey to Joseph Simpkins, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the Joe Simpkins branch of Beech Creek of Tug River, described by *meets* and bounds, and as containing 123 acres.

5. A conveyance or instrument executed by Ulysses Hinchman, Commissioner of School Lands of Logan County, bearing date the 23rd day of July, 1881, conveying or purporting to convey to Elijah Mounts, a certain tract of land situate, lying and being in the County of Logan, (now Mingo) on Beech Creek, described by *meets* and bounds, and as containing 49½ acres.

6. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 10th day of November, 1884, conveying or purporting to convey to Elijah Mounts, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Beech Creek, a branch of Sandy River, described by *meets* and bounds, and as containing 277 acres.

7. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 9th day of June, 1884, conveying or purporting to convey to Polly Tiller and Elijah Mounts, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Beech Creek, a branch

page 510.]

of Sandy River, described by *meets* and bounds, and as containing 70 acres.

8. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 20th day of October, 1888, conveying or purporting to convey to William Straton, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the Joe Simpkins branch of Beech Creek of Sandy River, described by *meets* and bounds, and as containing 123 acres.

9. A conveyance or instrument executed by Ulysses Hinchman, Commissioner of School Lands of Logan County, bearing date the 29th day of July, 1881, conveying or purporting to convey to M. B. Mullins, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the Old House branch of Beech Creek, a branch of Sandy River, described by *meets* and bounds, and as containing 353 1-3 acres.

10. A conveyance *ir* instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 20th day of October, 1888, conveying or purporting to convey to C. W. Greever, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on beech Creek of Sandy, described by *meets* and bounds, and as con-

page 511.] taining 101 acres.

11. A conveyance or instrument executed by U. B. Buskirk, Commissioner of School Lands of Logan County, bearing date the 6th day of May, 1890, conveying or purporting to convey to Samuel Walton and James O.Keeffe, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Beech Creek and its tributaries described as containing 100 acres.

12. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 20th day of October, 1888, conveying or purporting to convey to C. W. B. Brockunier, a certain tract or parcel of Land situate, lying and being in the County of Logan, (now Mingo) described by

meets and bounds, and as containing 29 acres,

13. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 20th day of October, 1888, conveying or purporting to convey to C. W. Brockunier, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the Rock House fork of Pigeon Creek, described by *meets* and bounds, and as containing 26 acres.

14. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 20th day of October, 1888, conveying or purporting to convey to C. W. Brockunier, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the Rock House fork of Pigeon Creek, described by *meets* and bounds, and as containing 188 1-2 acres.

15. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 22nd day of May, 1888, conveying or purporting to convey to E. C. Duty, two certain tracts or parcels of land situate, lying and being in the county of Logan, (now Mingo) and on the Rock House Fork of Pigeon Creek, described by *meets* and bounds, and as containing 498 and 184 acres respectively.

page 512.]

16. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 17th day of December, 1887, conveying or purporting to convey to Lewis White, a certain tract or parcel of land situate, lying and being in the county of Logan, (now Mingo) and on the Rock House Fork of Pigeon Creek, described by *meets* and bounds, and as containing 83 acres.

17. A conveyance or instrument by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 24th day of August, 1888, conveying or purporting to convey to Joseph Hatfield, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Ben Creek of Sandy

River, described by *meets* and bounds, and as containing 48 acres.

18. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 10th day of February, 1887, conveying or purporting to convey to Nathan Chafin and John L. Chafin, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the Big South branch of the Rock House fork of Pigeon Creek, described by *meets* and bounds, and as containing 226 acres.

19. A conveyance or instrument executed by L. D. Chambers, Commissioner of Logan County, bearing date the 11th day of June, 1883, conveying or purporting to convey to Nancy Simpkins, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the Bush Fork of Beech Creek, described by *meets* and bounds, and as containing 168 acres.

20. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 4th day of October, 1883, conveying or purporting to convey to Mitchell Hatfield, a certain tract or parcel of land situate, lying and being in the county of Logan, (now Mingo) and on Ben Creek of Sandy River, described by *meets* and bounds, and as containing 151 acres.

page 513.]

21. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 12th day of July, 1884, conveying or purporting to convey to H. J. Duty, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the Rock House Fork of Pigeon Creek, described by *meets* and bounds, and as containing 144 acres.

22. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 1st day of November, 1887, conveying or purporting to convey to William Straton, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the ridge

between the Right hand fork of Elk and the Middle Fork of Elk, and the Rock House fork of Pigeon Creek, described by *meets* and bounds, and as containing 363 acres.

23. A conveyance or instrument executed by William Straton Commissioner of School Lands of Logan County, Bearing date the 1st day of May, 1882, conveying or purporting to convey to Ira L. Farley, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the Rock House fork of Pigeon Creek, described by *meets* and bounds, and as containing 27 acres.

24. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 10th day of April, 1888, conveying or purporting to convey to L. D. Steels a certain tract or parcel of land situate, lying and being in the County of Logan, on Island Creek, and the Left-hand fork of same, described by *meets* and bounds, and as containing 117 acres.

page 514.] 25. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands, of Logan County, bearing date the 6th day of March, 1889, conveying or purporting to convey to William P. Floyd and James A. Nighbert, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Mate and Pigeon Creek, described by *meets* and bounds, and as containing 668 1-2 acres.

26. A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 22nd day of October, 1886, conveying or purporting to convey to Martha Steele, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Beech Creek a branch of Sandy River described by *meets* and bounds, and as containing 87 acres.

Thereupon the said William Kronewett, by his attorney, gave notice in open Court that he would, at the expiration of thirty (30) days from this date, move the court to dismiss from this suit

all the lands described in each and all of the aforesaid letters patent and conveyance or instruments.

page 515.] Order filing Papers of Alex. Stafford & wife.

And at another day of said Circuit Court, to-wit: on the 5th day of June, 1905, the following decree was entered:

State of West Virginia,)
vs. (*In Chancery.*
Henry C. King, et al.)

This day came Alex. Stafford and Lorentia Stafford, his wife, by their attorney, W. B. Cornwell, filed in the above cause the following letters patent issued by the Governor of Virginia.

1. One to John Stafford for 20 acres in Logan County on the Guyandotte River, dated the 30th day of July, 1841.

2. One to John Stafford for 170 acres in Logan County, on the South west side of Guyandotte River and bearing date the 1st day of September, 1856.

3. One to John Stafford for 70 acres in Logan County, on the Rich Fork of Harrys Branch of Guyandotte River and bearing date the 1st day of September, 1856.

4. One to John Stafford for 37 acres in Logan County on Harrys Branch of Guyandotte River, bearing date the 30th day of June, 1845.

5. One to John Stafford for 140 acres in Logan County, on Stafford Branch of Guyandotte River, bearing date the 1st day of September, 1856.

6. A conveyance or instrument executed by L. D. Chambers as Commissioner of school lands for Logan County under decree of the Circuit Court of said County to John W. Stafford, Bingham H. White, D. K. Stafford and Alex. Stafford, bearing date the 29th day of July, 1887, conveying or purporting to con-

page 516.] vey a tract of 597 3/4 acres on Harrys Branch of Guyandotte River.

And the said parties by their said attorney gave notice to the

State of West Virginia and to the defendant, Henry C. King, that after the lapse of thirty (30) days from the day of filing said letters patent and conveyance or instrument, they would move that this suit be dismissed as to the lands mentioned and described in said letters patent and in said conveyance or instrument.

And Wellington D. Anderson, Trustee, filed in this cause a duly certified copy of a conveyance or instrument bearing date the 12th day of June, 1883, made by L. D. Chambers as commissioner of School Lands of Logan County to Melvin B. Lawson, conveying or purporting to convey under decrees of said Circuit Court, 507 acres of land situate on the waters of Island Creek and gave notice to the State and to the defendant, Henry C. King, that he would within thirty (30) days from the day of filing of said conveyance or instrument, move the court to dismiss this suit as to the tract of 507 acres mentioned and described in said conveyance or instrument.

page 517.] Order filing Papers of The McDonalds.

State of West Virginia.

At another day of said Circuit Court, to-wit on the 9th day of June, 1905, the following decree was entered:

State of West Virginia.)
vs. (*In Chancery.*
Henry C. King, et al.)

This day Millard McDonald, Bruce McDonald, Bilton McDonald, Ann Brook Turley, Alice Robinson and Mary A. Perry, children and heirs at law of W. W. McDonald, deceased, gave notice to the State of West Virginia and to the defendant, Henry C. King, that within thirty (30) days from this date they will move this Court to dismiss this suit as to all the lands mentioned and described in the several letters patent issued by the Governor of Virginia and by the Governor of West Virginia and in the conveyance or instruments executed by the Commissioner of School Lands of Logan County, which letter patent and conveyance or

instruments are mentioned in and were exhibited as parts of the answer of said defendants heretofore filed in this cause.

And the said Bruce McDonald, Millard McDonald and Bilton McDonald gave notice to the State of West Virginia and to said King that at the same time they would move this court to dismiss from this suit the lands mentioned *an* described in the letters patent and in the conveyances or instruments executed by the Commissioner of School Lands of Logan County, which letters patent and conveyances or instruments are mentioned in and exhibited as parts of their joint answer heretofore filed in this cause. All

page 518.] of the letters patent and conveyances or instruments mentioned in both of said answers were filed in this cause at the time of the filing of said answers.

J. L. Caldwell, John Q. Dickerson, C. W. Campbell, in his own right and as trustee and the Dingess-Rum Coal Company this day called to the notice of the State of West Virginia and to the defendant, Henry C. King, that they had filed in this cause certain letters patent issued by the Governor of Virginia and others by the Governor of West Virginia and to certain conveyances or instruments executed by the Commissioner of School Lands of Logan County, all of which are mentioned and referred to in the answer of said parties in this cause and that they would *move* this court *with* thirty (30) days from this date to dismiss this suit as to all the lands mentioned and described in said letters patent and in said conveyances or instruments.

The defendant, William McGee, gave notice to the said State and to said King, that he would at the same time submit a like motion to dismiss this suit as to all the lands mentioned and described in certain letters patent filed with and made a part of his answer in this cause.

page 519.] Order filing Papers of Wm. McGee.

State of West Virginia)
vs. (*In Chancery.*
Henry C. King, et als.)

This day came the defendant, William McGee, filed the following letters patent:

1. One for 411 acres, in McDowell County, on Trace fork and Picture Tree Branch, waters of Panther Creek, Tug River, to Benjamin W. Williams, dated the 1st day of September, 1859.

2.— One for 277 acres, in McDowell County, on Little Cub Creek and on the River ridge on the South side of Tug River, to H. A. Harmon, Erastus Harmon, Thomas G. Harrison and Joseph H. Harrison, bearing date the 1st day of October, 1852.

3.— One for 682 acres, McDowell County, Tug River, to Montgomery Cox, dated the 1st day of September, 1860.

The three foregoing patents issued by the governor of Virginia.

4.— One patent issued by the Governor of West Virginia to James B. Bentley for 175 acres, in McDowell County on Little War Creek, Tug River and dated the 10th day of June, 1868.

The said defendant gave notice to the State and to the defendant, Henry C. King, that after the lapse of thirty (30) days from this date he would move this court to dismiss this cause as to the said lands mentioned and described in each of said

page 520.] letters patent.

Order filing Papers of Egbert Mills.

And at another day of said Circuit Court, to-wit: on the 12th day of June, 1905, the following decree was entered.

State of West Virginia.)
vs. (*In Chancery.*
Henry C. King, et al.)

This day came Egbert Mills, Trustee, by his attorneys, C. W. Campbell, John A. Sheppard and Edward C. Lyon, and filed in open Court a duly certified copy of a letter patent issued by the Governor of West Virginia, bearing date the 28th day of June, 1873, to Evermont Ward and Hoffman Allen and Louisa G. Allen, children and devisees of John Allen, deceased, for 490 acres of land situate on the upper side of Gilbert Creek, of Guyandotte River.

Thereupon the said Egbert Mills, Trustee, by his attorneys gave

notice in open Court that he would at the expiration of thirty (30) days from this date, move this court to dismiss from this suit all the land described in said letter patent.

page 521.] Order Filing Papers of Arthur D. Bright.

State of West Virginia.)
vs. (*In Chancery.*
Henry C. King, et al.)

This day came Arthur D. Bright, one of the defendants in the above named cause, by his attorney C. W. Campbell John A. Sheppard and Edward C. Lyon, and filed in open Court a duly certified copy of a letter patent issued by the Governor of Virginia, bearing date the 2nd day of February, 1852, to Andrew Varney and William Tiller for 125 acres of land situate on the south side of Pigeon Creek.

Thereupon the said Arthur D. Bright, by his attorneys, gave notice in open Court that he would at the expiration of thirty (30) days from this date, move this court to dismiss from this suit, all the land described in said letter patent.

ORDER FILING PAPERS OF BUSKIRK & ROBERTSON.

State of West Virginia

page 522.] *vs.* *In Chancery.*

Henry C. King et al.

This day U. B. Buskirk and S. B. Robertson, by W. B. Cornwell Esquire, their counsel, filed the following conveyance or instruments executed by L. D. Chambers, Commissioner of School lands of Logan County, under decrees of the Circuit Court of that County to-wit:

1. One to John E. Robertson, bearing date the 20th of December, 1886 for tract No. 247, containing 99 acres of Land on Laurel Hollow and about one mile east of the Court House of said county.

2. One to J. S. Miller, bearing date the 5th day of April, 1883, for a certain tract of land on Cazes Branch near Logan Court House, containing 33 acres.

Also the following deed executed by U. B. Buskirk, Commissioner of School Lands to Virginia Lawson, bearing date the 1st day of June 1892, for tract No. 38, containing 110 acres of Cazees Branch of Guyandotte River and tract No. 52, containing 11 acres, situate on the head of Barney Branch of Guyandotte River.

Said defendants gave notice of the State of West Virginia and to Henry C. King that after the expiration of thirty (30) days from this date, they would move this court to dismiss this cause as to the lands mentioned and described in said conveyances or instruments.

page 523.] ORDER FILING PAPERS OF ARTHUR D. BRIGHT.

State of West Virginia,
vs.) *In Chancery.*
Henry C. King.

This day came Arthur D. Bright, Trustee, one of the defendants in the above named cause, by his attorneys, C. W. Campbell, John A. Sheppard and Edward C. Lyon and filed in open Court a duly certified copy of a letter patent, bearing date the 1st day of December, 1851, issued by the Governor of Virginia to Ephraim Hatfield for 125 acres of land, situate on the Meadow Branch of Mates Creek, of Sandy River.

Thereupon the said Arthur D. Bright, Trustee, by his attorneys, gave notice in open court that he would at the expiration of thirty (30) days from this date, move this court to dismiss from this suit all the land described in said letter patent.

page 524.] ORDER FILING PAPERS OF HUGH AVIS.

And at another day of said Circuit Court to-wit, on

the 26th day of June, 1905, the following decree was entered:

State of West Virginia,

vs.) *In Chancery.*

Henry C. King et al.

This day came Hugh Avis, by W. B. Cornwell, his attorney, and filed in the above cause the following conveyance or instruments, namely:

1. A conveyance or instrument bearing date the 22nd day of July, 1881, executed by Ulysses Hinchman, Commissioner of school lands of John P. Vance, assignee of Perrin Christian conveying or purporting to convey 224 acres of land on Elk Creek.

2. A conveyance or instrument, executed by L. D. Chambers, Commissioner of School lands of Samuel Farley, bearing date the 20th day of April, 1884, and conveying or purporting to convey 133½ acres on which the said Samuel Farley then resided.

3. A conveyance or instrument executed by L. D. Chambers, Commissioner to Hugh C. Avis, bearing date the 25th day of November, 1884, conveying or purporting to convey 548½ acres of land on Camp Creek, a branch of Guyandotte River.

Thereupon said Hugh C. Avis, by his said counsel gave notice to the State of West Virginia and to the said Henry C. King that after the elapse of 30 days from this date, he would move to dismiss this suit as to the lands mentioned and described in said conveyances or instruments.

June 24th, 1905.

page 525.] MOTION OF ALEX. STAFFORD TO DISMISS.

And at another day, at a special term of said Circuit Court, to-wit, on the 10th day of July, 1905, the following decree was entered:

State of West Virginia,

vs.

Henry C. King et al.

Alex. Stafford, one of the defendants in said cause, by C. W. Campbell, John A. Sheppard and Edward C. Lyon, W. B. Camp-

bell, his counsel, this day moved the court to dismiss from this suit all the lands mentioned and described in all of the letters patent, or in conveyances or instruments executed by the commissioner of School Lands, filed by him in this cause on the 1st day of June, last.

MOTION OF EGBERT MILLS TO DISMISS.

State of West Virginia,

vs.

Henry C. King et al.

Egbert Mills, one of the defendants in said cause, by C. W. Campbell, John A. Sheppard and Edward C. Lyon his counsel, this day moved the Court to dismiss from this suit all the lands mentioned and described in all of the letters patent, and in conveyances or instruments executed by the Commissioner of School Lands, filed by him in this cause on the 1st day of June, last.

page 526.] MOTION OF WM. H. LAWSON TO DISMISS.

State of West Virginia,

vs.

Henry C. King.

William H. Lawson, trustee, one of the defendants in said cause, by C. W. Campbell, John A. Sheppard and Edward C. Lyon his counsel, this day moved the court to dismiss from this suit all the lands mentioned and described in all of the letter patent, and in conveyance or instrument executed by the Commissioner of School Lands, filed by him in this cause on the 1st day of June last.

page 526a.] MOTION OF ARTHUR D. BRIGHT, TRUSTEE, TO DISMISS.

State of West Virginia,

vs.

Henry C. King et al.

Arthur D. Bright, trustee, one of the defendants in said cause,

by C. W. Campbell, John A. Sheppard and Edward C. Lyon his counsel, this day moved the court to dismiss from this suit all the lands mentioned and described in all of the letter patent, filed by him in this cause on the 1st day of June last.

page 527.] MOTION OF WM. KONENWETT TO DISMISS.

State of West Virginia,

vs.

Henry C. King et al.

William Kronewett, one of the defendants in said cause, by C. W. Campbell, John A. Sheppard and Edward C. Lyon, his counsel, this day moved the court to dismiss from this suit all the lands mentioned and described in all of the letters patent, and in conveyances or instruments executed by the Commissioners of School Lands, filed by him in this cause on the 1st day of June last.

MOTION OF EGBERT MILLS, TRUSTEE, TO DISMISS.

State of West Virginia,

vs.

Henry C. King et al.

Egbert Mills, trustee, one of the defendants in said cause, by C. W. Campbell, John A. Shepard and Edward C. Lyon his counsel, this day moved the court to dismiss from this suit all the lands mentioned and described in all of the letters patent, and in conveyances or instruments executed by the Commissioners of School Lands, filed by him in this cause on the 1st day of June last.

page 528.] MOTION OF ARTHUR D. BRIGHT TO DISMISS.

State of West Virginia,

vs.

Henry C. King et al.

Arthur D. Bright, one of the defendants in said cause, by C.

W. Campbell, John A. Shepard and Edward C. Lyon his counsel, this day moved the court to dismiss from this suit all the lands mentioned and described in all of the letters patent, and in conveyances or instruments executed by the Commissioner of School Lands, filed by him in this cause on the 1st day of June last.

MOTION OF CALDWELL, DICKERSON & CAMPBELL TO DISMISS.

State of West Virginia,
vs.) *In Chy.*
Henry C. King et al.

J. L. Caldwell, John Q. Dickerson, C. W. Campbell, defendants in said cause, by W. B. Cornwell, their attorney, this day moved the court to dismiss from this cause all the lands mentioned and described in all of the letters patents, or conveyances or instruments executed by the commissioner of School Lands, filed by them or either of them in this cause on the 9th day of June, last.

page 529.] MOTION OF THE McDONALDS TO DISMISS.

State of West Virginia,
vs.
Henry C. King.

Millard McDonald, Bruce McDonald, Bilton McDonald, Ann Brook Turley, Alice Robinson and Mary A. Perry, children and heirs-at-law of W. W. McDonald, deceased, defendants in said cause by C. W. Campbell, John A. Shepard, Edward C. Lyon and W. B. Cornwell their counsel, this day moved the court to dismiss from this suit all the land mentioned and described in all of the letters patents, or conveyances or instruments executed by the com-

missioner of School Lands, filed by them or either of them in this cause on the 9th day of June, last.

MOTION OF WM. McGEE TO DISMISS.

State of West Virginia,
vs.) *In Chy.*
Henry C. King et al.

William McGee, one of the defendants in said cause, by C. W. Campbell, John A. Shepard, Edward C. Lyon and W. B. Cornwell, his counsel, this day moved the court to dismiss from this suit all the lands mentioned and described in all of the letters patent, or in conveyances or instruments executed by the Commissioner of School Lands filed by him in this cause on the 9th day of June, 1903, last.

page 530.] ORDER FILING PAPERS OF RICHARD TORPIN ET ALS.

And at another day of said Circuit Court, to-wit, on the 11th day of July, 1905, the following decree was entered:

State of West Virginia,
vs.) *In Chancery.*
Henry C. King et al.

This day Richard Torpin, George Whorton Pepper and John Lambert, Jr., trustee, defendants herein, appeared by C. W. Campbell their attorney and filed in this cause letters patent issued by the Governor of Virginia to Aly Hatfield, dated the last day of February, 1859, for eighty-nine acres of land on the South of Mate Creek.

(2). Letters patent issued by the Governor of Virginia to John Smith dated the 14th day of August, 1827, for one hundred acres of land on Mate Creek.

(3). Letters patent issued by the Governor of Virginia to Andrew Murphy for 150 acres of land on Mate Creek, and dated the 1st day of October, 1849.

(4). Letters patent issued by the Governor of West Virginia to Warren Alderson, dated the 24th day of February, 1871, for three hundred and fifty acres of land on Mate Creek and Upper Lick Branch.

(5). Conveyance or instrument made by L. D. Chambers, Commissioner of School Lands of Logan County, to Elias Hatfield, dated the 20th day of August, 1823, for one hundred and seventy-one acres on Mate Creek.

And thereupon the said defendants gave notice to the State and Henry C. King that after the lapse of thirty days they would move this court to dismiss this case as to said lands.

page 531.] ORDER FILING PAPERS OF SUNDRY PERSONS.

State of West Virginia,
vs.) *In Chancery.*
Henry C. King et al.

This day came the state by E. W. Worrell and E. M. Showalter her attorney, and the defendant Henry C. King by M. F. Stiles, his attorney, and thereupon Richard Torpin, John Whorton Pepper and John Lambert, Jr., trustee, appeared by their attorney C. W. Campbell, and filed three conveyances or instruments in this cause executed by L. D. Chambers, Commissioner of School Lands of Logan county:

One to Elias Hatfield for 749 acres of land on Mate Creek, bearing date the 15th day of November, 1884:

One to J. D. Sergeant bearing date the 5th day of October, 1888, for 440¾ acres of land, situate on Mate and Pigeon Creeks:

One to Elias Hatfield bearing date the 15th day of November, 1884, for 322 acres of land, situate on Mate Creek:

And P. P. Chew, S. W. M. Feamster and John W. Johnson, by

C. W. Campbell their attorney, filed in this cause a conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, to Joseph Altizer, bearing date the 1st day of April, 1885, for a tract of 532 acres of land on the lower side of Buffalo Creek.

And J. F. Call, Trustee, by C. W. Campbell his attorney, filed a conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands, to William Straton, bearing date the 24th day of June, 1886, for a tract of 329 acres of land on the branch at the James Lawson house, near Logan Court House.

page 532.]

And H. C. Avis by C. W. Campbell his attorney, filed a conveyance or instrument from said commissioner of School Lands to James D. Brown, bearing date the 5th day of July, 1883, for 76 acres of land lying on Huff's Creek in Logan County.

And the defendant M. B. Mullens appeared by George J. McComas, his attorney, and filed two conveyances or instruments, one executed to him by the said commissioner of School Lands bearing date the 19th day of December, 1882, for a tract of 140 acres of land, situate on Winding Show branch of the Guyandotte River in Logan County; And one executed by U. B. Buskirk, Commissioner of School Lands, to said M. B. Mullens, bearing date the 10th day of January, 1890, for a tract of 52 1-2 acres of land situate on the ridge between the Run Creek and Guyandotte River.

And the defendant George McDonald, by C. W. Campbell his attorney, filed in this cause a certain conveyance or instrument from L. D. Chambers, Commissioner, etc., to said George McDonald, bearing date the 1st day of April, 1889, for 300 acres of land situate on Pond Mill Branch of Huff's Creek.

And the defendant F. D. Stollings, and the heirs of Moses Mounts, by C. W. Campbell their attorney, filed in this cause two conveyances or instruments, both executed by said L. D. Chambers, Commissioners of School Lands, one to Hugh Toney bearing date the 2nd day of February, 1889 for 336 acres of

land on the Rock Camp Fork of Dingess Run; and the others bearing date the 20th day of October, 1885, and executed to William Straton, for 181 acres of land on the Thacker's Fork of Pigeon Run; and another tract of 301 acres on Pigeon Creek, and a tract of 368 acres on the head of the right fork of Rock House Fork of Dingess Run.

And Amos C. Hall and O. L. Snyder, by C. W. Campbell, their attorney, filed a conveyance or instrument executed to them by A. M. Stewart, Commissioner of School Land, of Wyoming County, in bearing date the 20th day of March,
page 533.] 1900, for 10,000 acres of land situate in Oceana, in Huff's Creek District, Wyoming County.

And the defendants J. J. Christian, B. P. Christian, Albert L. Christian, George F. Christian, Mrs. Altizer, (nee Christian) Mrs. Fint Ferrell, (nee Christian) and Mrs. William Stanley, (nee Christian), children and sole heirs at law of Paren Christian, deceased, by said C. W. Campbell their attorney filed the following patent:—

One to James P. Christian for 25 acres on Guyandotte river below Elk Creek, and bearing date the 2nd day of August, 1858;

One to Isiah Elkins for 194 acres of land in Logan County, on the lower side of Elk Creek and Guyandotte river, bearing date the 1st day of August 1860.

And the following conveyances or instruments executed by the Commissioner of School Lands of Logan County to Paren Christian:—

One bearing date the 2nd day of June, 1881, for 184 1-2 acres of land on Dingess Fork of Elk Creek and Guyandotte River, executed by Ulysses Hinchman, Commissioner of School Lands:—

One bearing date the 11th day of June, 1881 for 129 acres of land, on the Moore's Fork of Elk Creek, by the same Commissioner of School Lands.

One bearing date the 23rd day of June, 1881, for 76 acres of

land, on the Moore's Fork of Elk Creek, and executed by the same Commissioner of School Lands.

Another conveyance or instrument bearing date the 20th day of June, 1881, for 201 1-2 acres of land on Elk Creek, executed by the same Commissioner of School Lands.

Another conveyance or instrument bearing date the 20th day of June, 1881, for 179 acres of land on the Turkey Pen Fork of Elk Creek, executed by the same Commissioner of School Lands:

page 534.] Another conveyance or instrument bearing date the 2nd day of June, 1881, for 134 acres of land on Moore's Fork of Elk Creek, executed by the same commissioner of School Lands.

Another conveyance or instrument bearing date the 2nd day of June, for 360 acres of land lying on the waters of Elk Creek beginning at the head of the Grapevine Hollow, executed by the same Commissioner of School Lands.

Another conveyance or instrument bearing date the 23rd day of June, 1881, for 199 acres of land on Elk Creek and Bear *Branche*, executed by the same Commissioner of School Lands.

Another conveyance or instrument bearing date the 11th day of November, 1890, executed by U. B. Buskirk, Commissioner of School Lands, to said Paren Christian, for a tract of 303 acres on the waters of Elk Creek, and which tract was sold by U. S. Hinehman, Commissioner of School Lands, to said Paren Christian on the 10th day of August, 1875.

And Ballard Browning and Roxy Plymale, by C. W. Campbell, their attorney, filed in this cause a conveyance or instrument executed by U. Hinehman, Commissioner of School Lands of Logan County, to Henderson Browning, bearing date the 1st day of June, 1881, for 214 acres of land on Bill Branch.

And Mrs. Vicie Nighbert, (nee Stratton), Mrs. John B. Wilkinson, (nee Stratton), and Major Stratton, Allen Stratton, Charles S. Stratton and Robert Stratton, children and heirs at law of William Stratton, deceased, by C. W. Campbell, their attorney, filed in this cause a conveyance or instrument by the

said L. D. Chambers, Commissioner of School Lands, to said William Stratton bearing date the 24th day of October, 1886 for 75 acres of land on Browning Fork of Horse Pen Fork of Gilbert's Creek.

And John W. Claypool, a sole heir at law of Robert Claypool, deceased, by C. W. Campbell his attorney filed in this cause the following conveyances or instrument executed by

page 535.] L. D. Chambers, Commissioner of School Lands, to Robert Claypool, bearing date the 20th day of March, 1889, for 229 acres of land on Huff's Creek in Logan County.

And John W. Claypool, Robert Claypool and Rosco Claypool, children and sole heirs at law of William Claypool, deceased, by their attorney C. W. Campbell, filed the following three conveyances or instruments, all executed by said L. D. Chambers, Commissioner of School Lands of Logan County:—

One to William Claypool for 37 acres of land on Huff's Creek, and bearing date the 20th day of October, 1885.

One to Robert Claypool bearing date the 20th day of March, 1889, for 190 acres, on Huff's Creek.

One to L. D. Hinchman and Robert Claypool bearing date the 9th day of December, 1882, for 130 acres on Lick Branch of Huff's Creek.

And said persons so filing said letters patent and conveyances and instruments gave notice to the State of West Virginia and to said Henry C. King that after the lapse of thirty days they would move the Court to dismiss this cause as to each and every of said tracts of land mentioned and described in each of said letters patent and conveyances and instruments, so as aforesaid filed by them respectively.

ORDER FILING PAPERS OF ALEX. TRENT.

page 536.] And at another day of said Circuit Court, to-wit on the 12th day of July, 1905, the following decree was entered:

State of West Virginia
vs. *In Chancery.*
Henry C. King et al.

This day came Alexander Trent, by Shepard and Goodykoontz his attorneys, and filed in the above styled cause the following grant, conveyance and instrument:—

1. A conveyance or instrument bearing date on the 7th day of April, 1884, executed by L. D. Chambers, Commissioner of School Lands, to Alexander Trent, conveying or purporting to convey 480 acres of land on the Guyandotte river and Ned's Branch:

Thereupon the said Alexander Trent gave notice in open court to the attorneys of the plaintiff, the State of West Virginia, and the defendant Henry C. King, that he would at the *expitation* of thirty days, or as soon thereafter as the court will hear him, move the Circuit Court of Marion County to dismiss the original and each and all of the amended and supplemental bills filed in the above styled cause as to the foregoing tract or parcel of land mentioned and described in the instrument hereinbefore set forth.

ORDER FILING PAPERS OF J. D. MOUNTS.

page 537.] State of West Virginia
vs.
Henry C. King et al.

This day came John D. Mounts by Shepard and Goodykoontz, his attorneys, and filed in the above styled cause the following grants, conveyances and instruments:—

(1.) Letters patent issued by the Governor of the Commonwealth of Virginia to Fredrick Trent, bearing date on the 1st day of November, 1859, for 225 acres of land, on Gilbert Creek.

Thereupon the said John D. Mounts gave notice in open Court to the attorneys for the plaintiff, the State of West Virginia,

and the defendant Henry C. King, that he would at the expiration of thirty days from this date, or as soon thereafter as the Court will hear him, move the Circuit Court of Marion County to dismiss the original and each and all of the amended and supplemental bills filed in the above styled cause, as to the foregoing tract or parcels of land, mentioned and described in the several instruments hereinbefore set forth.

ORDER FILING PAPERS OF ELIJAH FERRELL.

State of West Virginia,
vs. *In Chancery.*
Henry C. King et al.

This day came Elijah Ferrell by Shepard and Goodykoontz, his attorneys, and filed in the above styled cause the following grant, conveyance and instrument.

(1.) The conveyance or instrument executed by L. D. Chambers, commissioner of School Lands, to Elijah Ferrell, bearing date on the 6th day of March, 1889, conveying or purporting to convey, a tract of 126 acres of land on Browning
page 538.] Fork of Horse Pen of Gilbert Creek.

Thereupon the said Elijah Ferrell gave notice in open Court to the attorneys for the plaintiff, the State of West Virginia, and the defendant Henry C. King that he would at the expiration of thirty days, or as soon thereafter as the court will hear him, move the Circuit Court of Marion County to dismiss the original and each and all of the amended and supplemental bills filed in the above styled cause as to the foregoing tracts or parcels of land, mentioned and described in the *instrument* hereinbefore set forth.

ORDER FILING PAPERS OF W. A. JOHNSON.

State of West Virginia,
vs. *In Chancery.*
Henry C. King et al.

This day came W. A. Johnson, by his attorneys Shepard and

Goodykoontz, and filed in the above styled cause the following grants, conveyances and instruments:—

(1.) Letters patented and issued by the Governor of the Commonwealth of Virginia, to Thomas Cline bearing date on the 1st day of December, 1856 for 84 acres of land in Twisted Gun Gap Fork of Gilbert's Creek.

(2.) Letters patent issued by the Governor of the Commonwealth of Virginia, to Thomas Cline, assignee of Gabrial Riffe, bearing date on the 30th day of September, 1846 for 37 acres of land on Twisted Gun Gap Fork of Gilbert's Creek.

(3. Letters patent issued by the Governor of the State of West Virginia to John Allen and Evermont Ward, bearing date on the 28th day of June, 1873, for 700 acres of land lying on the lower side of Gilbert's Creek.

Thereupon the said W. A. Johnson gave notice
page 539.] in open Court to the attorneys for the plaintiff, the State of West Virginia and the defendant Henry C. King, that he would at the expiration of thirty days, or as soon thereafter as the court will hear him, move the Circuit Court of Marion County to dismiss the original and each of the amended and supplemental bills filed in the above styled cause as to the foregoing tracts or parcels of land mentioned and described in the several instruments hereinbefore set forth.

ORDER FILING PAPERS OF JAMES HATFIELD.

State of West Virginia

vs. *In Chancery.*

Henry C. King et al.

This day came James Hatfield by Shepard and Goodykoontz, his attorneys, and filed in the above styled cause the following grants, conveyances and instruments:—

(1.) A conveyance or instrument bearing date on the 4th day of October, 1883, executed by L. D. Chambers, Commissioner of School Lands, of Michael Hatfield conveying or purporting to convey 151 acre of land on Ben Creek.

(2.) Letters patent issued by the Governor of the Commonwealth of Virginia to Aly Hatfield, Jr., bearing date on the 1st day of November, 1856 for 30 acres of land on the Old House Branch Fork of Ben Creek.

(3.) Letters patent issued by the Governor of the Commonwealth of Virginia to Aly Hatfield, Joseph Hatfield and Aly Hatfield, Jr., bearing date on the 5th day of July, 1861, for 390 acres of land on the northwest side of the right hand fork of Ben Creek.

page 540.]

(4.) Letters patent issued by the Governor of the Commonwealth of Virginia to Aly Hatfield, Jr., bearing date on the 1st day of November, 1856, for 150 acres of land lying on Ben Creek.

(5.) A conveyance or instrument bearing date on the 12th of March, 1889, executed by L. D. Chambers, Commissioner of School Lands, to James Hatfield conveying or purporting to convey 470 acres of land on Ben Creek.

Thereupon the said James Hatfield gave notice to the attorneys for plaintiff, the State of West Virginia, and the defendant Henry C. King, that he would at the expiration of thirty days or as soon thereafter as the court will hear him, move the Circuit Court of Marion County to dismiss the original and each and all of the amended and supplemental bills filed in the above styled cause as to the foregoing tract or parcel of land, mentioned and described in the several instruments hereinbefore set forth.

ORDER FILING PAPERS OF ALEXANDER VARNEY.

State of West Virginia

vs. *In Chancery.*

Henry C. King et al.

This day came Alexander Varney by Shepard & Goodykoontz, his attorney; and filed in the above styled cause the following grants, conveyance and instruments:—

(1.) A conveyance or instrument bearing date on the 20th day of October, 1888, executed by L. D. Chambers,
page 541.] Commissioner of School Land to Alexander Varney, conveying or purporting to convey 45 2-3 acres of land on Pigeon Creek.

(2.) Letters patent issued by the Governor of the Commonwealth of Virginia to Andrew Varney bearing date on the 1st day of February, 1855, for 60 acres of land on the Murphy Branch of Pigeon Creek.

Thereupon the said Alexander Varney gave notice in open Court to the attorneys for the plaintiff, the State of West Virginia, and the defendant, Henry C. King, that he would at the expiration of thirty (30) days from this date, or as soon thereafter as the Court will hear him, move the Circuit Court of Marion County to dismiss the original and each and all of the amended and supplemental bills in the above styled cause as to the foregoing tracts or parcels of land mentioned and described in the several instruments hereinbefore set forth.

ORDER FILING PAPERS OF WILLIAM J. CANADY.

State of West Virginia
vs. *In Chancery.*
Henry C. King et al.

This day came William J. Canady by Shepard & Goodykoontz, his attorneys, and filed in the above styled cause the following grants, conveyances and instruments:—

(1.) Letters patent issued by the Governor of West Virginia, to Michael Mounts and A. Trent, bearing date on the 10th day of June, 1868, for 75 acres of land on Beech Creek.

(2.) A conveyance or instrument bearing date on the 2nd day of June, executed by Ulysses Hinchman, Commissioner of School Lands, to Richard Canady, conveying or
page 542.] purporting to convey 187 acres of land on Beech Creek.

Thereupon the said William J. Canady gave notice in open Court to the attorneys for the plaintiff, the State of West Virginia, and the defendant Henry C. King, that he would at the expiration of thirty (30) days, or as soon thereafter as the court would hear him, move the Circuit Court of Marion County, West Virginia, to dismiss the original and each and all of the amended and supplemental bills filed in the above styled cause as to the foregoing tracts or parcels of land, mentioned and described in the several instruments hereinafter set forth.

ORDER FILING PAPERS OF TOLER.

State of West Virginia
vs. *In Chancery.*
Henry C. King et al.

This day came A. H. Toler, J. C. B. Toler, Julia C. Toler, J. M. P. Toler and Nettie Toler, by their attorneys, Shepard and Goodykoontz, and filed in the above styled cause the following grants, conveyances and instruments:—

(1.) Letters patent issued by the Governor of West Virginia to Andrew Toler bearing date on the 5th day of August, 1868, for 50 ares of land on Ben Creek.

(2.) Letters patent issued by the Governor of West Virginia to Andrew Toler bearing date on the 5th day of August, 1868, for 50 acres of land on Ben Creek.

(3.) Letters patent issued by the Governor of the Commonwealth of Virginia, to William Mullins, bearing date on the 1st day of June, 1860 for 420 acres of land on the left hand fork of Ben Creek.

(4.) Letters patent issued by the Governor of the Commonwealth of Virginia, to William Collins, bearing date on the 2nd day of August, 1852 for 78 acres of land on the Hickory Gap Fork of Ben Creek and Allen Creek.

page 543.] (5.) A conveyance or instrument bearing date on the 21st day of December, 1886, executed by L.

D. Chambers, Commissioner of School Lands to Andrew M. Toler, conveying or purporting to convey 38 1-2 acres of land on the Hickory Gap Branch of Ben Creek.

(6.) A conveyance or instrument bearing date on the 24th day of August, 1888, executed by L. D. Chambers, Commissioner of School Lands, to Andrew M. Toler, conveying or purporting to convey 209 3-4 acres of land on Ben Creek.

(7.) A conveyance or instrument bearing date on the 24th day of August, 1888 executed by L. D. Chambers, Commissioner of School Lands, to A. M. Toler, conveying or purporting to convey 173 acres of land on Ben Creek.

Thereupon the said A. H. Toler, J. C. B. Toler, Julia C. Toler, J. M. F. Toler and Nettie Toler gave notice in open court to the attorneys for the plaintiff, the State of West Virginia, and the defendant Henry C. King, that they would at the expiration of thirty days from this date, or as soon thereafter as the court will hear them, move the Circuit Court of Marion County to dismiss the original and each of the amended and supplemental bills filed in the above styled cause as to the foregoing tracts or parcels of land, mentioned and described in the several instruments hereinbefore set forth.

ORDER FILING PAPERS OF R. C. WHITE AND OTHERS

page 544.] And at another day of said Circuit Court, to-wit on the 13th day of July, 1905, the following decree was entered:

State of West Virginia)
vs. (*In Chancery.*
Henry C. King et al.)

This day Robert C. White, Dewitt White, Prescott White, Bennett S. White and Stella White, devisees of Mary A. White, dec'd by William B. Cornwell, their counsel, filed the following letters patent, namely:—

Letters patent from the State of ——— Virginia to Joseph Sedgebeer, bearing date the first day of October, 1853, for 800 acres of land, lying in Logan County, on Dingess Run, and Marsh Fork of same, branches of Guyandotte River.

Said defendants gave notice to the State of West Virginia and Henry C. King, that after the expiration of thirty days from this date they would move this court to dismiss this cause as to the lands mentioned and described in said conveyance or instrument.

MOTION OF BUSKIRK AND ROBERTSON TO DISMISS.

State of West Virginia)
vs. (*In Chancery.*
Henry C. King et al.)

U. R. Buskirk and S. B. Robertson by C. W. Campbell and W. B. Cornwell *his* attorneys this day moved the court to dismiss from this suit all the land mentioned and described in all of the letters patent, or in conveyance or instruments executed by the Commissioner of School Lands, filed by him in this cause on the 12th day of June, 1905, last.

ORDER FILING 18TH EXCEPTION TO COMMISSIONER'S REPORT.

The State of West Virginia)
page 545.] *vs.* (*In Chancery.*
Henry C. King et al.)

The defendants Arthur D. Bright, Arthur D. Bright, trustee, Egbert Mills, Jr., Egbert Mills, Jr., trustee, William H. Lawson, William H. Lawson, trustee, William Kronewett, Mitchell Hatfield, Augusta Ferrell, L. D. Chambers, Alexander McClintock, William E. Chilton, John McClintock, Z. T. Vinson, Receiver, Forest Coal Company, Panhandle Coal & Iron Co., Spruce Coal & Lumber Co., Grayton Water Works & Co., Grayton

Mining Company, Richard Torpin, trustee, Geo. Whorton Pepper, trustee, John Lambert, trustee, J. D. Sargeant, L. M. Holt, Mary Perry, J. P. Hutchinson, A. W. Watson, John Kenada, C. W. Brockunier, H. P. Duty, James Hatfield, Bruce McDonald, Millard McDonald, F. M. Trent, Cloyd Bailey, Julius C. Toler, J. C. B. Toler, A. H. Toler, Mary Toler, Laura Toler, Nettie Toler, King Hiram Blankenship, Leander Ellis, L. B. Sipples, John Q. Dickinson, J. L. Caldwell, C. W. Campbell, C. W. Campbell, trustee, Crocket Allison, Charles L. Tracy, William McGee, J. D. Alderson, Bilton McDonald, Moses Blankenship, and J. M. Blankenship, having this day presented in open court their eighteenth exception to the Report of Commissioner John T. Graham upon the question of the location of the tract of land in question in the above styled cause, and known therein as the Morris or King tract, called 500,000 acres.

It is ordered that the same be filed and set down for hearing.

MOTION OF ARTHUR D. BRIGHT, TRUSTEE, TO DISMISS.

The State of West Virginia)
page 546.] *vs.* (*In Chancery.*
Henry C. King et al.)

Arthur D. Bright, trustee, one of the defendants in said cause by C. W. Campbell, John A. Sheppard and Edward C. Lyon, his counsel, this day moved the court to dismiss from this suit all the land mentioned and described in the letters patent filed by him in this cause on the twelfth day of June last.

MOTION OF EGBERT MILLS TO DISMISS.

The State of West Virginia)
vs. (*In Chancery.*
Henry C. King et al.)

Egbert Mills, trustee, one of the defendants in said cause, by C. W. Campbell, John A. Sheppard, and Edward C. Lyon, his counsel,

this day moved the court to dismiss from this suit all the lands mentioned and described in the letters patent filed by him in this cause on the twelfth day of June, last.

MOTION OF ARTHUR D. BRIGHT TO DISMISS.

State of West Virginia)
vs. (*In Chancery.*
Henry C. King et al.)

Arthur D. Bright one of the defendants in said cause by C. W. Campbell, John A. Sheppard and Edward C. Lyon, his counsel, this day moved the court to dismiss from this suit
page 547.] all of the lands mentioned in the letters patent filed by him in this cause on the twelfth day of June, last.

MOTION OF AARON BROWNING ET ALS., TO DISMISS.

State of West Virginia)
vs. (*In Chancery.*
Henry C. King et al.)

This day Aaron Browning, Milton C. Browning, Vanilla Altizer (nee Browning) Thursa Ann Justice, (nee Browning), Penelope Toler, (nee Browning), Mrs. Robt. Micael, (nee Browning), Elmire Godfrey, (nee Browning), children and heirs of W. C. Browning, dec'd and Almeda Browning, widow, appeared by C. W. Campbell, their attorney, and filed in this cause the following conveyance or instruments, executed by Ulysses Hinchma Commissioner of School Lands of Logan County, to William C. Browning:

One dated the 1st day of June, 1881, for 112 acres of land on Laurel Branch of Guyandotte river.

One bearing date the 1st day of June, 1881, for 148 acres of land on the left fork of Spice Creek.

One dated the first day of June, 1818, for 47 acres of land on Deed Ford Branch.

One bearing date on the first day of June, 1881, for 68 acres of land on Deed Ford Branch.

One bearing date the first day of June, 1881, for 527 acres of land on Spice Creek.

One bearing date on the first day of June, 1881, for 68 acres of land on Deed Fork Branch.

One bearing date on the 13th day of May, 1887, executed by L. D. Chambers, Commissioner of School Lands, for 640 acres on Spice Creek.

And thereupon gave notice in open Court to the State of West Virginia and Henry C. King, that after the lapse of thirty days from this date, or as soon thereafter as this court may be in session, and can hear same, and in the absence of an allegation by the State or some adverse claimant, and a certificate of the forfeiture of the said tracts or some parts of them, they would move this court to dismiss this suit as to said tracts, or to so much of them, as may not be so alleged and shown to be forfeited.

page 548.]

ORDER FILING PAPERS OF J. W. & GEO. HINCHMAN.

State of West Virginia)
vs. (*In Chancery.*
Henry C. King et al.)

This day came Joseph W. Hinchman and George Hinchman, by C. W. Campbell, their attorney, and filed the following letters patent by the Governor of Virginia, viz:—

One for 78 acres of land situate on Rich Creek, a branch of Guyandotte river to William Hinchman, dated the first day of August, 1817.

One to Levi Varner for 30 acres of land on said Rich *Rich* Creek dated the 1st day of November, 1859.

One to William Hinchman for 25 acres of land on said Rich Creek, bearing date the 30th day of July, 1837.

One to Jas. H. Hinchman for 1040 acres of land on said Rich Creek, bearing date the 1st day of January, 1862.

And also the following conveyances or instruments executed under decree of the Circuit Court of Logan County, in a proceeding under chapter 105 of the Code, to sell school lands, viz:—

page 549.] One of George Hinchman bearing date the 10th day of March, 1886, executed by L. D. Chambers, Commissioner of School Lands, for 218¼ acres of land on said Rich Creek, on the left hand fork of the same.

Another executed to Joseph Hinchman by said K. D. Chambers Commissioner of School Lands, bearing date the 10th day of March, 1886, for 180½ acres of land on the east side of Guyandotte River.

Another executed by William Stratton, Commissioner, under decree of the Circuit Court of Logan County, to George Hinchman, for a tract of 329 acres, situate in the mountains between Rich and Madison and Adams Creeks, and bearing date the 5th day of May, 1887.

And gave notice in open Court that after the lapse of thirty days from this date, or as soon thereafter as this court may be in session, and in the absence of an allegation by the plaintiff or any adverse claimant of said land, that the same or some part thereof are forfeited, and in the absence of a certificate of the Auditor or Clerk of the County Court that said lands or some parts thereof are forfeited, said defendant will move this court to dismiss this suit as to all of said lands mentioned and described in said letters patent and said deeds, which may not then be alleged and certified to be forfeited.

page 550.] ORDER ENLARGING TIME TO SHOW CAUSE AGAINST SUNDRY MOTIONS TO DISMISS.

And at another day of said Circuit Court, to-wit, on the 25th day of July, 1905, the following decree was entered:

State of West Virginia.
vs.) *In Chancery.*
Henry C. King et al.

This day this cause came on to be further heard upon the several motions as herein after specified to dismiss this suit as to all those certain tracts or parcels of land mentioned and described by L. D. Chambers, Commissioner of School Lands of Logan County, which patents and conveyances or instruments were heretofore filed in this cause on the following dates by the following persons, and whose motion to dismiss this suit as to such lands were made on the day named, to-wit:

On the first and 12th days of June last by Arthur D. Bright Trustee, whose motion to dismiss were made on the 10th and 13th days of July current; on the 1st and 12 day of June last, by Egbert Mills and Egbert Mills, trustee, and whose motion to dismiss this suit was made on the 10th and 13th days of July current; on the 1st day of June, last, by William H. Lawson, trustee whose motion to dismiss this suit was made on the 10th day of July current; on the 1st day of June, last, by William Kronewett, whose motion to dismiss this suit was made on the 10th day of July, current; on the 1st day of June by Alex. Stofford, whose motion was made on the 10th day of July, current; on the 12th day of June, last, by U. B. Buskirk and S. B. Robertson, whose motion to dismiss this suit was made on the 13th day of July, current; on the 9th day of June last by William McGee, whose motion to dismiss was made on the 10th day of July current; on the 9th day of June, last, by J. L. Caldwell, John Q. Dickerson and C. W. Campbell, whose motion to dismiss was made on the 10th day of July current; on the 9th day of June last, by Millard McDonald, Bruce McDonald, Bilton McDonald, Ann Brook Turley, Alice Robinson and Mary A. Perry, whose motion to dismiss this suit was made on the 10th day of July, current.

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On consideration whereof, and for reasons appearing to the court it is adjudged, ordered and decreed that the State of

West Virginia and any other claimant in this suit of said tracts or parcels of land or any or either of them, on any part of either, be and they are hereby given further time, till the first day of the next October term of this court to make or show any just or legal defense against said motion or either of them, and why said motion shall not be granted.

page 552.] ORDER FILING BUTTRICK'S LETTER AND OTHER PAPERS.

And at another day of said Circuit, to-wit, on the 27th day of July, 1905, the following decree was entered:

State of West Virginia
vs.) *In Chancery.*
Henry C. King et al.

The defendants heretofore served in this cause, other than said King, this day presented the two maps referred to in the evidence of E. L. Buttrick, in the case of H. C. King against M. B. Mullens and others, in Ejectment, lately pending in the Circuit Court *Court* of the United States, at Parkersburg, West Virginia, together with a copy of said evidence and the letter from said Buttrick, as attorney, to W. E. Chilton, marked "X. X." and "Y. Y." respectively, and asked leave to file the said maps and copies in this cause to be read as evidence in their be half in the hearing thereof. And the plaintiff and defendant King agreeing that the said copies are correct copies and may be taken and treated with like effect as if originals duly proven, the same are ordered to be filed, subject only to such objections, if any, as to their competency and materially as evidence as might be urged if the originals had been filed instead.

And thereupon the defendant, H. C. King, tendered an agreement marked "S. S." which is also ordered to be filed.

We agree this order may be entered.

B. J. & K. *Attys.*
M. F. S. *Atty.*

page 553.] TESTIMONY OF E. L. BUTTRICK in KING vs. MULLINS.

Evidence of E. L. BUTTRICK, taken in the case of H. C. King against M. B. Mullin et al., in ejectment lately pending in the Circuit Court of the United States at Parkersburg, West Va.

Q. I hand you herewith map marked Patent map of Sandy River Basins, West Virginia, stamped upon it Swan, Land Office December 19th 1891. Please state what that is?

A. That is the map that Mr. R. W. Harris sent from Huntington to me.

Q. Who was R. W. Harris at the time he sent it to you?

A. He was an emplyee of the Swan estate.

Q. I what capacity?

A. For the purpose of looking up junior claims upon the land which the Swan estate claimed.

Q. Who was the Trustee of the Swan estate at that time?

A. John R. Reed.

Q. Who was John R. Reeds' agent in West Virginia at that time?

A. I do not know that he had any particular agent unless it was Mr. Harris. He did what outside work there was to be done. In any legal advice that was to be given I represented him.

Q. What was R. W. Marris business?

A. I believe he is a mining engineer; he is engineer and surveyor.

Q Were you not at that time the agent and the only agent with power to act for John R. Reed in addition to being his attorney?

A. No sir. Mr. Jos. S. Clark of Philadelphia gave to Mr. Harris most of his instructions. Mr. Harris, however, advised with me. I could explain the relation which Mr.

page 554.] Clark sustained to Mr. Reed.

Q. Explain that, Colonel?

A. There was an arrangement made between Mr. Clark and Mr. Reed, with the assent of Court, that Mr. Clerk should do what he could to sell this Swan property within a certain time, and he should have a per centage upon what was realized.

Q. Didn't Mr. Clerk have a contract with Mr. Reed, the Trustee of this land, which gave Mr. Clerk an interest in the property?

A. Yes sir.

Q. It was while Mr. Clerk had that contract and that interest that he had this map made, wasn't it?

(THE PLAINTIFFS OBJECT TO THE ABOVE QUESTION AS IMMATERIAL; THE COURT OVERRULES THE OBJECTION).

Q. Do you know the terms of the contract which Mr. Clark had with Mr. Reed, the Trustee?

A. I don't know that I can tell.

Q. Let me see if I can refresh your memory—

BY THE COURT: Is that material to show the contract?

BY MR. VINSON: We want to show that he represented him as trustee.

Q. Mr. Harris was employed by him at the time he made this map, wasn't he?

A. I think you, and I and Mr. Harris and Mr. Clark were all in his employe.

BY MR. TRIGG:

Q. Your position was that of an attorney?

A. Yes sir.

BY MR. CHILTON:

We now offer the map dated December 19th, 1891, Swan Estate Land office.

(OBJECTED TO BY THE PLAINTIFF.)

By Mr. Chilton:

page 555.] Q. Do you know when this map was issued by Mr. Harris first?

A. As soon as he got it finished.

Q. When was that?

A. Whether it was the date put down there or not I do not know.

BY THE COURT:

Was it before or after the land was conveyed to Armstrong?

A. I do not know.

BY MR. CHILTON:

Q. I hand you a copy of a letter purpoting to be signed by you *datee* July 13, 1891, addressed to W. E. Chilton. Please look at that copy and say now, when your memory is refreshed with that letter, and with the writing in ink inside of what purports to be the said map of the Morris 500000 acres, the Reynold's survey, and see if you can tell when the map was issued?

(OBJECTED TO BY THE PLAINTIFF.)

A. That is not my hand writing, but I think it is a copy of my letter.

Q. Whose hand-writing is that on the map in ink?

A. I think that is mine.

Q. Do you or not recollect that the writing in ink on the map just referred to was cotemporaneous with the letter of June 13, 1891, which I hand you?

A. No sir I do not.

Q. What is your recollection about that?

A. It must have been a considerable time after that, because I made up some additional memorandum on some other maps.

Q. I now hand you a map purporting to be a map of the Ohio Extension of the Norfork & Western Railroad, 1893, with

some surveys laid down thereon, among them the 500000 acres, —Robt. Morris survey, with some writing in typewriting on each of *there* surveys. Please look at that map and state who drew upon the same the surveys and who did the typewriting thereon in explanation thereof?

[page 556.] A. I did.

Q. When was that work done with reference to the time *your* received the Swan Estate map, of which we have just been talking?

A. It must have been quite a while afterwards, I can't exactly tell.

Q. How do you mean?—the work was done after *your* received the map, or the map was received after you had done the work?

A. I think the map was done after I received the map.

Q. Wasn't the work done in 1891?

A. The map wasn't issued until 1893.

Q. I mean the map on that one?

A. I can't tell you when I did it. I do not carry these things in my mind.

Q. When did you make these maps and statements referred to, and this writing of the maps, and write the letter of July 13th, 1891 with reference to your employment as attorney for John R. Reed. Was it after or before?

A. I was employed for John R. Reed in 1886.

Q. Have you been representing him since?

A. Yes sir.

Q. When were you employed for Henry C. King?

A. I think it was last spring, last winter.

Q. The spring of 1895?

A. Yes sir.

(BOTH OF THE MAPS ABOVE REFERRED TO ARE OFFERED IN EVIDENCE, AND THE LETTER REFERRED TO; OBJECTED TO BY THE PLAINTIFFS.)

BY MR. CHILTON:

Q. Go and locate to the jury the property on the map?

BY MR. SHUMATE:

Q. Have your been on the land?

A: No sir.

page 551.] BY THE COURT.

Q: Which of these maps is it marked W. E. Chilton. No. 1?

A: Mr. Chilton wanted to know whether the 500000 interferred with his land. I had this map in my office, or probably I had at that time the notes of Mr. Reynolds, who made a survey of this land for Col. Miller at the instance of Mr. Randall when he was Trustee, and Mr. Randall employed Mr. Hotchkiss, and he employed Mr. Reynolds. I have a typewritten copy of Mr. Reynold's survey, Whether that letter was formed an examination of Reynold's survey or whether I took this as Reynold's survey I do not know. Knowing nothing about this I presume he called for natural corners, and I predicated what I have on the N. & W.—I predicated that what Mr. Reynolds said was natural calls was natural calls. I knew nothing about it at all.

BY THE COURT:

Col. Butterick states that the map *alleuded* to as No. 1 is in his office, and that can be produced; the matters connected with that can be held in abeyance until the map is produced. The Norfolk & Western map is a map showing the locality of that country geaerally, and among other things laying down what is supposed to be 500000 acre survey patented to Robt. Morris. It appears from the testimony that that 500,000 acres was laid down upon that map by Col. Butterick, from information that he deemed necessary or he would not have placed it there. It also appears that *the* represented the Swan Estate not simply as attorney but he represented it in another capacity—

BY MR. CHILTON—I would like for the Colonel to look at his

testimony taken on the last trial to show that he testified that he was the attorney and the agent?

A. I know I am the attorney, and the agent.

BY JUDGE STILES:

page 358.] This railroad map was two years after the conveyance.

BY THE COURT:

It also appears to the Court, as I was going to state, that the interest of the Swan Estate was conveyed by the Trustee Reed, who succeeded Randall (if I have the dates correctly), prior to the time that this map was issued. Now going to the date of this other map on this same point, that map was prepared under the directions of the surveyor who was employed by the Trustee on the Swan Estate—

BY THE WITNESS: I beg your pardon; he wasn't the Surveyor of the Trustee. I do not think he ran any lines at *al.*

BY THE COURT:

I do not think he had run any lines, but *though* Hotchkiss was employed by Randall. Hotchkiss is executing the instructions of the Trustee employed this man Randall—

BY JUDGE STILES: That is not Hotchkiss' survey, but it is Harris'.

BY THE COURT

I say that Harris finished the work that Hotchkiss had commenced.

BY THE WITNESS: The survey made by Hotchkiss was in 1884.

BY THE COURT:

It is the same survey made under the direction of the Swan Estate. I do not think I can be *mistakened* about that; if so, I want to be corrected.

BY THE WITNESS: I said I might have taken the typewritten work, or I might have taken this work.

BY THE COURT:

It was a map used by the Trustee of the Swan
page 459.] Estate. It was made under the directions of the
Trustee of the Swan Estate. The property was thrown upon the markets under the direction of the Swan Estate, and in order to find a purchaser the maps were used, and it was so used by Mr. Clark and others. The trustees of the Swan Estate have used their publication, and it is proper that the fact should go before this jury. If the estate finds that it is laboring under a mistake, and if the representation in that map is not correct this plaintiff may show that. It may show the inaccuracy *od* the survey. It is not absolutely bound by it, but just as Col. Buttrick stated "When I made that map I presumed them to be facts". If the Swan Estate was mistaken let it show, *vut* that it did use this map it is stated, and therefore I hold that this is proper evidence. I think the Norfolk & Western map was made after their property passed out of the possession of the *Swann* Estate, but I think that the other map is proper *testmony.*

BY JUDGE STILES TO WITNESS:

Q. I understand that you understood you gave that statement without being on the ground at all?

A. I had never been nearer it than Logan C. H.

Q. You do not know a corner was connected with the land, do you?

A. No sir.

Q. Have you had reason from that time to change your opinion upon the question, and if so, to what degree upon your view of the case?

(OBJECTED TO)

Q. Were you acting as agent of the party at this time? Had you any authority to make any such contract as that?

A. It was a private matter between Mr. Chilton
page 560.] and myself. I may have signed some paper for John
R. Reed as attorney, and it is probable that I did. Mr. Reed never knew anything about most *pf* this.

Q. So far as acting in this capacity you were acting as attorney for Mr. Reed, but not as attorney for the estate?

A. Yes sir.

Q. Did you adhere to, or have you changed your opinion as to the correctness of your then opinion?

A. I have changed it very materially.

Q. Upon what ground?

A. My reasons for it are that I heard the testimony which has been adduced by the defendant with regard to the location of what they claim to be a natural corner.

Q. The plaintiffs or the defendants?

A. The defendants:— and I am *entierly* satisfied in my mind that the testimony is entirely inadequate to prove it. I have heard the testimony of the surveyors in the case as to what they found upon the ground. I have seen the plat of James Taylor. I know that he was called upon to survey 500303 acres of land making Gilbert Creek corner as a corner, and it does not correspond with corners, and there is no element in the case which would satisfy me that that survey could be a correct one.

Q. The former survey?

A. Yes sir, the one made by Mr. Reynolds.

Q. Is it not a fact that you have vastly more information and knowledge upon the subject now of the location of that survey than you had at the time that letter was written?

A. Do you mean the whole survey?

Q. Yes sir.

page 561.] A. I had absolutely none except—

Q. I mean your own information?

A. I have no information upon the subject except the plat I saw.

Q. Since that time I want to know if you have not obtained vastly more facts upon which you would base a judgment now in comparison with what you had then?

A. Certainly I would.

Q. And would consider yourself vastly more capable of forming

a judgment of where the corner was than now?

A. Yes sir.

BY MR. VINSON:

Q. When did you begin to experience this change of heart?

A. I experienced this change of heart when I began to investigate it.

Q. When did you begin to investigate it?

A. Immediately after I was employed by Mr. King, and after I heard the proof of the two trials at Harrisonburg, and the last trial here.

Q. Have you heard more of the facts than the gentlemen of this jury, and what will be detailed in this trial?

A. I do not know what will be detailed.

Q. Presuming that those *facts* will be detailed that have been detailed?

A. I have not heard the details.

Q. Then the jury would be as capable of presuming with the evidence before them as you would be?

A. I presume so.

Q. At the time you gave this opinion you had not been on any of this 500000 acres, or any line or any corner?

A. No sir.

Q. You have not been on any of the lines or cor-
page 562.] ners since your employment by Mr. King, have you.

A. No sir.

BUTTRICK LETTER.

page 563.] "July 13th, 1891.

"W. E. Chilton, Esq.,
Charleston, W. Va,

"My *sear* Sir:—

"I have examined carefully the notes of survey under the direction of Mr. Jed Hotchkiss of a grant made by the Commonwealth of Virginia to Robert Morris June 23rd, 1795, of 500,000 acres now lying in Wyoming and McDowell Counties, W. Va., and from

said survey, which I believe correctly locates the tract, I am satisfied that no part of the land described in the plat hereto annexed marked W. E. Chilton No. 1 is embraced within the area of said tract of 500,000 acres, and therefore John R. Read, trustee for the creditors of the estate of James Swann, deceased, who claims as such trustee said latter tract, has no interest in or claim to said tract of Mr. Chilton.

"E. L. BUTTRICK,
Attorney for John R. Read,
trustee of the estate of
James Swann, deceased."

STIPULATION.

State of West Virginia,

page 564.] *vs.* (*In Chancery.*

Henry C. King and others.

In the Circuit Court of Marion County.

The complainant and Henry C. King defendant having agreed that a copy of the evidence of E. L. Buttrick and of his letter as attorney to W. E. Chilton of date July 13th, 1891, might be filed in this cause on behalf of the other defendants with like effect as the originals but subject to such objections only as might be urged against said originals is used instead.

Now the undersigned defendants agree that the following facts may be taken and treated as proven in connection therewith.

1st. That the said H. C. King on the ———day of———1895 docketed in the United States Circuit Court at Parkersburg, W. Va. the declaration in ejectment a copy of which is hereto annexed and that the defendants therein pleaded thereto and said suit is still pending.

2nd. That from 1896 until after the date of the deed from W. E. Chilton and wife to the Briar Mountain Coal & Coke Company M. F. Stiles, of counsel for H. C. King, resided and kept an office in the city of Charleston, W. Va., where said Chilton also resided and had his office.

It is further agreed by the parties hereto in event the Court in

the above cause shall so fix the boundaries of the Morris 500,000 acre grant as to include the lands claimed by the Briar Mountain Coal & Coke Company in its answer in this cause or any part of them, then either party hereto shall have the right for a reasonable time upon reasonable notice to the other to take such

page 565.] evidence as may be proper touching *anf* matter arising upon said answer or any pleading in reference thereto, and such notice given to the undersigned counsel for said King and said Briar Mountain Coal & Coke Company, shall be sufficient.

But leave for the taking of such further evidence, shall not be construed to delay the hearing and decision of the Court upon the fixing of the boundaries of said Morris grant.

This agreement is the same designated as Z Z in the order entered in said cause this 27th day of July, 1903.

HENRY C. KING,
By M. F. STILES, *of Counsel.*
BRIAR MTS. C. & C. CO.
By BROWN, JACKSON & KNIGHT,
Atys.

DECLARATION IN EJECTMENT—KING v. CHILTON ET ALS.

page 566.]

DECLARATION IN EJECTMENT—KING AND CHILTON ET ALS., IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA, FOURTH JUDICIAL CIRCUIT.

Henry C. King, a citizen of the State of New York, plaintiff, complains of Conley Blankenship, William McGee, Allen Butcher B. C. Williamson, James Luster, Alvin Irwin, A. J. Stacey, John Stacey, Shade Stacey, James H. Stacey, Jesse R. Irwin, Julius C. Williamson, W. E. Chilton, J. L. Corn and A. B. Crumm, citizens of the State of West Virginia, defendants of a plea of trespass, to-wit: That heretofore, to-wit: On the 1st day of January, A. D. 1894, the plaintiff was possessed in fee of a certain tract or

parcel of land in the Counties of Logan, Wyoming and McDowell, State of West Virginia, and in the States of Virginia or Kentucky, being a tract of land granted to Robert Morris by the Commonwealth of Virginia, by patent dated June 23rd, A. D. 1795, and in said patent described as follows:

Beginning at two poplars and two chestnut trees on a branch of Guyandotte river, about six miles from the mouth of Little War Creek, a branch of Sandy river, being a corner of a survey of said Nicholas of 480,000 acres, and of a survey of 320,000 acres made for said Nicholas and Jacob Kinney, and with a line of the latter S. 33 degrees W. 6720 poles, crossing a dividing ridge and down War Creek to the mouth, crossing Sandy river at six miles below, crossing Panther Creek at nine miles, and crossing several ridges to four white oaks on the northwest bank of Knox Creek and thence leaving said survey W. 3840 poles, crossing said creek and some of the branches thereof and along the spurrs of the ridge dividing the waters of said Creek and Peter's Creek, a branch of Sandy river, to three poplars and a sugar tree by a small branch of Knox Creek, thence N. 8000 poles, crossing Knox Creek at about four miles, Sandy river at twelve miles, at the mouth of Turkey Creek and up said creek and the N. W. forks of same, crossing [page 567.] Buffalo Creek, Pigeon Creek, and the dividing ridge between Sandy and Guyandotte rivers and Gilbert's Creek twice, a branch of Guyandotte, to three sugar trees in a bottom of said river and about 20 poles below the mouth of Gilbert's creek, and thence N. 10 degrees E. 4450 poles, crossing Guyandotte River, several small branches and some ridges to pointers; thence E. 6620 poles, crossing Guyandotte river and several branches thereof, to three sugar trees and a buckeye, by a small branch of the same, being the N. W. corner of a survey of said Nicholas of 483,000 acres, and thence with same S. 6800 poles, crossing Huff's or Cain Creek, to the beginning.

And that plaintiff being so possessed of said land, as aforesaid, defendants afterwards, to-wit, on the first day of April, A. D. 1894, entered upon the portion thereof lying in the said State of

West Virginia, and unlawfully withhold the possession of same from plaintiff, to the damage of plaintiff in the sum of fifty thousand dollars ($50,000.00) And plaintiff says, that the value of the matter in dispute herein exceeds the sum of ten thousand dollars ($10,000.00.)

Whereof plaintiff brings this suit.

MAYNARD F. STILES *and*
H. K. SHUMATE, *Att'ys. for Plff.*

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA,
page 568.] FOURTH JUDICIAL CIRCUIT.

To Conley Blankenship, William McGee, A. J. Stacey, John Stacey, Shade Stacey, Allen Butcher, B. C. Williamson, James Luster, Alvin Irwin, James H. Stacey, James R. Irwin, Julius C. Williamson, W. E. Chilton, J. L. Corn and A. B. Crumm.

You are hereby notified that the foregoing Declaration in Ejectment will be filed in the office of the Clerk of said Circuit Court, at Parkersburg, West Virginia, on the first Monday of October, 1894, and if you fail to appear and plead thereto within the time required by law, judgment will be given against you.

HENRY C. KING.
By MAYNARD F. STILES *and*
H. K. SHUMATE, *HIS Attorneys.*

UNITED STATES OF AMERICA,

SS.

DISTRICT OF WEST VIRGINIA.

Anthony J. Manns, being duly sworn on oath doth say that he served the foregoing notice and declaration upon defendant Conley Blankenship, Sept. 17th 1894, and upon defendants Wm. McGhee, Shade Stacey, James Luster, and John Stacey, September 18th 1894, and upon defendants J. L. Corn, Allen Butcher, and B. C. Williamson September 19th 1894, by delivering to each of said defendants in person, in said District,—a true copy thereof; and up-

on defendants A. J. Stacey September 18th 1894, by delivering to the wife of said Stacey at his usual place of residence in said District, a copy of said notice and declaration and informing her of the nature and contents thereof; and upon defendant A. B. Crumm, Sept. 19th 1894, by delivering to and leaving with J. L. Corn, partner of said A. B. Crumm at their place of business

page 569.] and residence in said District, a copy of said notice and declaration.

ANTHONY J. MANNS.

Subcribed and sworn to before me this 22nd day of September, 1894.

M. A. HATFIELD,
Justice of the Peace, Logan County.

UNITED STATES OF AMERICA,
DISTRICT OF WEST VIRGINIA, SS.
COUNTY OF LOGAN.

Anthony J. Manns, being duly sworn on his oath doth say that on the 24th day of September, 1894, he served the within notice and declaration upon defendants Julius C. Williamson, Jesse R. Irwin, and Alvin Irwin in said District by delivering a copy to Julius C. Williamson and Alvin Irwin, and by delivering a copy at the usual abode of Jesse R. Irwin to his son, Alvin Irwin, in said District a copy of said notice and declaration.

ANTHONY J. MANNS.

Subscribed and sworn to before me this 24th day of September, 1894.

H. H. WILLIAMSON,
Notary Public.

page 570.] UNITED STATES OF AMERICA,
DISTRICT OF WEST VIRGINIA,
COUNTY OF KANAWHA.

W. A. Kelley being duly sworn on his oath doth say; that on the 27th day of September 1894, he served the within notice and declar-

ation upon Defendant W. E. Chilton by delivering to him a copy thereof, at his law office in the city of Charleston, Kanawha County, W. Va.

W. A. KELLEY.

Subscribed and sworn to before me this the 27th day of September, 1894.

L. L. SANDERS, *N. P.*

A true copy,
Attest:

EDWIN M. KEATLEY, *Clerk.*

ORDER FILING SECOND AMENDED ANSWER OF TURKEY CREEK LAND CO.

page 571.] And at another day of said Circuit Court, to-wit, on the 27th day of July, 1905, the following decree was entered:

State of West Virginia
vs. (*In Chancery.*
Henry C. King, et al.

This day came the Turkey Creek Land Company, a corporation, one of the defendants by its attorneys, and tendered its second amended and supplemental answer and asks leave to file same, which leave is granted and the answer is filed accordingly, and the State replies generally to said answer; and on motion of Henry C. King he is given time in which to reply or file any pleadings in relation thereto good in law.

ORDER FILING EIGHTH AMENDED BILL.

State of West Virginia
vs. *In Chancery.*
Henry C. King et al.

This day came the State of West Virginia by Showalter & White, her attorneys, and tendered her eighth amended bill

herein alleging among other things that Robert Hatfield, Laura J. Hatfield and ———— Hatfield the defendant therein named set up certain claims and title to portions of the land in controversy in this cause, and praying that the defendants therein named be made parties defendant to this cause and required to answer the same. And the said amended bill being seen and inspected by the court. It is adjudged, ordered and decreed that the same be filed, that the parties therein named be made parties defendant in this cause. And the plaintiff is given leave to sue out process against them.

page 572.]

ORDER FILING PAPERS OF TURKEY CREEK LAND CO.

State of West Virginia

vs. (*In Chancery.*

Henry C. King, et al.

This day came the Turkey Creek Land Company, a corporation, one of the defendants in this cause, by its attorneys, Rucker, Anderson & Hughes, C. W. Campbell and John A. Sheppard, and filed in open Court duly certified copies of the following letters patent issued by the Governor of Virginia, to-wit:

(1.) Patent issued by the Governor of Virginia, bearing date on the 20th day of September, 1830, to Isam Blankenship, for 34 acres of land situate on Tug River.

(2.) Patent issued by the Governor of Virginia, bearing date on the 1st day of August, 1836, to Eli Bailey, for 10 acres of land situate on Sandy River.

(3.) Patent issued by the Governor of Virginia, bearing date on the 30th day of September, 1848, to Harvey Bailey for 58 acres situate on Sandy River.

(4.) Patent issued by the Governor of Virginia, bearing date on the 25th day of January, 1853, to Eli Bailey for 38 acres of land situate on Turkey Creek of Sandy River.

(5.) Patent issued by the Governor of Virginia bearing date on the 1st day of October, 1850, to William Collins for 24 acres

of land situate on Spring Fork of Ben Creek.

(6.) Patent issued by the Governor of Virginia bearing date the 1st day of November, 1855, to Christian Cline for 150 acres situate on Four pole Creek of Sandy River.

page 573.] (7.) Patent issued by the Governor of Virginia bearing date on the 1st day of October, 1850, to Aly Hatfield for 75 acres, situate on the right hand fork of Ben Creek of Sandy River.

(8.) Patent issued by the Governor of Virginia bearing date on the 30th day of August, 1842, to Aly Hatfield for 66 acres, situate on Ben Creek.

(9.) Patent issued by the Governor of Virginia, bearing date on the 3rd day of October, 1860, to John Dempsey, Jr., for 1191 acres situate on Turkey Creek of Sandy River.

(10.) Patent issued by the Governor of Virginia bearing date on the 2nd day of August, 1852, to Andrew Hatfield for 50 acres, situate on the Twisted Gun Branch of the right hand fork of Ben Creek.

(11.) Patent issued by the Governor of Virginia, bearing date on the 2nd day of August, 1858, to W. M. Alderson, for 125 acres situate on Twisted Gun Branch of Gilbert's Creek.

(12.) Patent issued by the Governor of Virginia bearing date on the 31st day of December, 1834, to Joseph Hatfield, Jr., for 30 acres situate on Ben Creek.

(13.) Patent issued by the Governor of Virginia bearing date on the 1st day of May, 1855, to John Dempsey, Jr., for 42 acres, situate on the Lick Branch of Sandy River.

(14.) Patent issued by the Governor of Virginia bearing date on the 1st day of November, 1856, to Aly Hatfield, for 30 acres, situate on the old house branch of Ben Creek.

(15.) Patent issued by the Governor of Virginia bearing date on the 30th day of June, 1845, to Andrew Hatfield for 21 acres situate on the right hand fork of Ben Creek.

(16.) Patent issued by the Governor of Virginia

page 575.] bearing date on the 1st day of November, 1856, to Aly Hatfield for 150 acres, situate on Ben Creek.

(17.) Patent issued by the Governor of Virginia bearing date on the 30th day of June, 1845, to Peter Cline for 32 acres situate on Gilbert's Creek of Guyandotte River.

(18.) Patent issued by the Governor of Virginia bearing date on the 2nd day of August, 1852, to Joseph Hatfield, for 54 acres situate on the Spring Fork of the right hand fork of Ben Creek.

(19.) Patent issued by the Governor of Virginia bearing date on the 2nd day of August, 1852, to Jacob Cline for 25 acres, situate on Gilbert's Creek of Guyandotte River.

(20.) Patent issued by the Governor of Virginia bearing date on the 2nd day of August, 1858, to Humphrey Trent for 70 acres, situate on the Mud Lick Fork of Gilbert Creek of Guyandotte River.

(21.) Patent issued by the Governor of Virginia bearing date on the 3rd day of July, 1860, to Humphrey Trent, for 90 acres, situate on Gilbert's Creek of Guyandotte River.

(22.) Patent issued by the Governor of Virginia bearing date on the 1st day of December, 1857, to Humphrey Trent for 54 acres situate on Gilbert's Creek of Guyandotte River.

(23.) Patent issued by the Governor of Virginia bearing date on the 29th day of November, 1845, to Frederick Trent for 48 acres situate on Gilbert's Creek of Guyandotte River.

(24.) Patent issued by the Governor of Virginia bearing date the 1st day of August, 1836, to E. Mason, for 28 acres, situate on Gilbert's Creek.

(25.) Patent issued by the Governor of Virginia bearing date on the 1st day of November, 1859, to Frederick Trent for 225 acres situate on Gilbert's Creek of Guyandotte River.

(26.) Patent issued by the Governor of Virginia
page 574.] bearing date on the 1st day of November, 1856, to
Thomas Mullins for 100 acres situate on Tug River.

(27.) Patent issued by the Governor of Virginia bearing date on the 1st day of November, 1859, to Warren M. Alderson

for 1300 acres situate on Spring Fork of the right hand fork of Ben Creek.

(28.) And the said defendant by its attorneys also filed in open Court the following letters patent issued by the Governor of West Virginia, to-wit:

(1.) Patent issued by the Governor of West Virginia bearing date on the 31st day of January, 1871, to David Cline for 100 acres, situate in Logan county.

(2.) Patent issued by the Governor of West Virginia bearing date the 31st day of March, 1868, to Johnson Trent for 39 acres situate on the old house branch of Gilbert's Creek.

(3.) Patent issued by the Governor of West Virginia bearing date the 13th day of March, 1868, to David Cline for 75 acres situate on Big Lick Fork of Gilbert's Creek.

(4.) Patent issued by the Governor of West Virginia bearing date the 22nd day of July, 1867, to Jacob Cline for 112 acres situate on Gilbert's Creek.

(5.) Patent issued by the Governor of West Virginia bearing date the 13th day of April, 1868, to David Cline for 33 acres situate on Gilbert's Creek of Guyandotte River.

(6.) Patent issued by the Governor of West Virginia bearing date the 22nd day of July, 1867, to Jacob Cline for 112 acres situate on the east side of Gilbert's Creek.

page 576.] Patent issued by the Governor of West Virginia bearing date the 15th day of April, 1868, to Simeon Justice for 1500 acres situate on Four Pole Creek, of Tug River.

And said defendants also filed in open Court the following conveyances or instruments executed by the Commissioner of School Lands of Logan County, to-wit:

(1.) A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date on the 12th day of March, 1889, conveying or purporting to convey to Alexander Trent a certain tract or parcel of land

situate, lying and being in Logan County on Gilbert's Creek, described by *meets* and bounds as containing 280 acres.

(2.) A conveyance or instrument executed by L. D. Chambers Commissioner of School Lands of Logan County, bearing date July 26, 1886, conveying or purporting to convey a certain tract or parcel of land situate, lying and being in the County of Logan on Gilbert Creek, and described by *meets* and bounds as containing 205 acres.

(3.) A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date on October 20, 1885, conveying or purporting to convey a certain tract or parcel of land situate, lying and being in the County of Logan on Ben Creek, and described by *meets* and bounds as containing 112 acres.

(4.) A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date on April 13, 1886, conveying or purporting to convey a certain tract or parcel of land situate, lying and being in the County of Logan on Four Pole Creek and Sandy River, and described by *meets* and bounds as containing 113 acres.

(5). A conveyance or instrument executed by L. D. Chambers Commissioner of School Lands of Logan County, bearing date the 4th day of May, 1888, conveying or purporting to convey a certain tract or parcel of land lying and being in the County
page 577.] of Logan, on Ben Creek, and described by metes and bounds as containing 187 acres.

(6). A conveyance or instrument executed by L. D. Chambers Commissioner of School Lands of Logan County, bearing date November 28, 1892, conveying or purporting to convey a certain tract or parcel of land situate, lying and being in Logan County, on Gilbert's Creek, and described by metes and bounds as containing 148 acres.

(7). A conveyance or instrument executed by L. D. Chambers Commissioner of School Lands of Logan County, bearing date on the 15th day of January, 1889, conveying or purporting to convey

a certain tract or parcel of land in Logan County, described by metes and bounds as containing 119-¼ acres.

(8). A conveyance or instrument executed by L. L. Chambers, Commissioner of School Lands of Logan County, bearing date November 10, 1884, conveying or purporting to convey a certain tract or parcel of land situate, lying and being in the County of Logan, on Big Fork ridge of Ben Creek and described by metes and bounds as containing 372 acres.

Thereupon the said Turkey Creek Land Company, by its attorneys gave notice in open court that it would, at the expiration of thirty (30) days from this date, move the Court to dismiss from this suit all the lands described in each and all of the aforesaid letters patent and conveyances or instruments.

page 578.] ORDER REFUSING TO EXTEND TIME TO OPPOSE MOTIONS TO DISMISS.

At another day to-wit, of said Circuit Court, on the 4th day of October, 1905, the following decree was entered:

State of West Virginia)
vs. (*In Chancery.*
Henry C. King et al.)

This day came Henry C. King by M. F. Styles, his attorney, and filed the affidavit of said M. F. Styles, and prayer the court to enlarge and extend the time within which said King might make defense against the motion to dismiss as provided in the former order, divers and sundry tracts of land embraced in the motion heretofore made of Arthur D. Bright, Arthur D. Bright, trustee, Egbert Mills, Egbert Mills, trustee, William H. Lawson, William H. Lawson, trustee, William Kronewett, J. L. Caldwell, C. W. Campbell, and John Q. Dickerson, U. B. Buskirk and S. R. Robertson, Alexander Stafford and Lorentia Stafford, Millard McDonald, Bruce McDonald, Bilton McDonald, Ann Brook, Turley, Alice Robertson, and Mary A. Perry. To the granting of such *extention*

of time the above named persons objected, and the court deeming the showing by said affidavit for such *extention* of time insufficient doth refuse to grant such *extention* as prayed for.

page 579.] AFFIDAVIT OF MAYNARD F. STILES FOR ENLARGEMENT OF TIME.

In the Circuit Court of West Virginia.
For the County of Marion.

State of West Virginia,)
vs.) *In Chancery.*
Henry C. King, et al.)

Maynard F. Stiles being duly sworn, doth say:—

That at the last term of the Court, Arthur D. Bright, Arthur D. Bright, Trustee, Egbert Mills, Egbert Mills, trustee, William H. Lawson, William H. Lawson, trustee, and William Kronenweet, having filed patents from the state of Virginia and West Virginia, and deeds from the Commissioner of School Lands of Logan County; for about one hundred separate and distinct parcels of land, moved this Court to dismiss this cause and all proceedings therein, as to said lands; and J. L. Caldwell, C. W. Campbell and John Q. Dickinson likewise moved the Court to dismiss the said cause as to a large number of other tracts claimed by them, for which they had filed similar patents and deeds; and U. B. Buskirk and S. B. Robertson likewise moved a dismissal of said cause as to the land embraced in sundry other like patents and deeds; and Alexander Stafford likewise moved the dismissal of said cause and proceeding as to sundry similar tracts claimed by him; and Millard McDonald, Bruce McDonald, Bilton McDonald, Alvin Brooke Turley, Alice Robinson and Mary A. Perry moved the Court to dismiss said cause and all proceedings as to the land embraced in a large number of similar patents and deeds, as will appear from sundry orders entered herein, under the provision of Section six, of Chapter 105, of the Code, as amended in 1905;

page 580.] and on the 25th day of July, the Court gave the defendant King until this day to "make or show any

just defense against said motions or either of them."

That it is represented by said moving parties that all of said tracts are situated within the boundaries of the parcels of land described in the amended and supplemental answer and petition of said King, and affiant says they are therefore parts of the land upon which said King has offered to pay the taxes and which he has by said amended petition claimed the right to redeem.

That said moving parties who have filed so called answers herein have alleged that all said tracts of land are held by them under section 3 of article 13 of the Constitution of West Virginia, upon the ground that the said tracts are held by them under title or claim of title regularly derived from or under grants from the State of Virginia or West Virginia, not forfeited, and upon which they or those under whom they claim have paid all state taxes for five successive years, since the year 1865, or from the date of the grant, where the grant has issued since that year, and that they have thereby acquired the title claimed by said defendant King.

That this cause was heretofore referred to a Commissioner in chancery at the request of said moving parties to determine and report, among other matters, what parts of the lands involved in this suit were held under said provision of the Constitution, but no evidence upon that question has been introduced by any of said parties, except as to certain land claimed by said Campbell, Caldwell and Dickinson upon which the Commissioner has made his report to the Court.

That about two hundred separate and distinct tracts and parcels of land embraced in said motion remain unreported upon, a large number of which originated before the formation of the State of West Virginia and more of which have passed through many hands and many claims of ownership before coming into the hands of the present claimants, and the chain of title, and the history of each tract as to claim of ownership and payment of taxes are, in nearly every case, long, involved and intricate, and a proper understanding and knowledge of the title and history of said parcels involves and necessitates a tracing of

page 581.]

the title of each of said two hundred or more tracts, an examination of all deeds and proceedings affecting the same, and the examination of the land books relative to the charging and payment of taxes on said lands.

That more than one half of said tracts, formerly situated in Logan County, have fallen into Mingo County by the creation of that county, and a search of the title to such tracts necessitates the examination of the records of both counties. In some cases persons who appeared to claim certain of the tracts in question were charged with a gross number of acres, and it is impossible to know from the land books and without information outside of the records, whether the land under investigation is embraced therein or not. In some instances conveyances have been made that do not contain any reference to the original tract, and purport to contain a different number of acres, and in some conveyances boundaries are made up of various tracts, from all of which it is impossible to know from anything on the record what original tracts have been conveyed.

That the Court House at Logan has been torn down and the records removed into a small room where they are in great confusion, and where many persons are engaged most of the time examining them and work is slow and interrupted.

page 582.] That affiant has long been the sole attorney of defendant King in this cause, except for the participation of Hon. W. S. Meredith, of Fairmont, in the argument of certain questions of law therein, and has along had charge of the preparation of said cause for hearing in all its branches, and the examination and contestation of all adverse claims, and such matters have been committed to no other attorney.

That the entire time of affiant, for nearly a month following said 25th of July, and up to August 20th, was taken up in this Court in this cause, in the argument of questions and the preparation of briefs therein, and all of affiant's time during the past month has been occupied with said cause, part of said time being devoted to the examination of records relating to the said tracts of land, but it has been impossible for affiant to devote but a small part of

his time since the entering of said order of July 25th, to the examination of the record title to said tracts of land. He has, however, progressed far enough to be satisfied that neither he nor any other person having no more personal acquaintance than he with the said several tracts, could make such an abstract of the title thereto as would be the basis of an intelligent opinion, or even a fairly good guess as to the situation of each tract, in three months uninterrupted labor.

That after the entering of said order, V. A. Wilder, who is interested with defendant King, and has about the same personal knowledge of said lands that affiant has, immediately entered upon an examination of the land books in the Auditor's

page 583.] Office, and spent about a month in investigating the records relating to the charging and payment of taxes on said land, but has been unable to make a full search, and no full search can be made without an abstract of title to said lands, and the knowledge of the claim of ownership of said lands at different periods that can only be had therefrom.

That affiant believes he will be able to disclose to the Court fatal defects and objections concerning very many of said tracts, if afforded sufficient opportunity to do so, and such as will defeat said motions, but the affiant says that the time given by said former order has been inadequate, and the time at affiant's disposal that he could have taken from the other imperative demands of this cause would have been insufficient for him to examine into and form an opinion upon the title to said tracts, if he had had before him a chain of title to each tract and a statement of the payment of taxes thereon.

MAYNARD F. STILES

Subscribed and sworn to before me this 3rd day of October, 1905.

R. B. PARRISH
Clerk of the Circuit Court of Marion County, West Va.

AFFIDAVIT OF V. A. WILDER.

page 584.] In the Circuit Court of West Virginia for the County of Marion.

State of West Virginia)
vs. (
Henry C. King et al.)

V. A. Wilder being duly sworn doth say that shortly after the first of June just passed the counsel for defendant King placed in affiant's hands copies of the orders entered herein on the first day of July current and the four or five day following filing herein about one hundred and fifty or more patents and deeds from the commissioners of school lands or patents and deeds for about one hundred and fifty or more different tracts of land, in which orders notices of motions to dismiss said cause as to said land to be *make* thirty days thereafter were *contained*, with a view to leaving affiant make or cause to be made a search as to the forfeiture of said tracts; whereupon affiant applied to the Auditor of West Virginia at his office for such search and proper certificate to be made and produced to the Auditor's Clerk who has charge of the land books and the making of official examination thereof the said copies of said orders and was by said officer informed that it would be impossible for him to make and complete the examination necessary to certify as to the forfeiture or non forfeiture of said lands in less than six weeks from the time of beginning of same and that it would be impossible for him to enter upon the undertaking within a month or six weeks from the time affiant made said application, on account of the press of official business. And affiant was unable to have an official search made as to all said parcels of land within thirty days after said orders

page 584.] were entered and said deeds and patents filed.

V. A. Wilder

Subscribed and sworn to before me this 13 day of July, 1905.

R. B. Parrish.

Clerk of the Circuit Court of Marion County, West Virginia.

And at another day of said Circuit, to-wit on the
page 586.] 6th day of December, 1905, the following decree was entered:

DECREE REVERSING COMMISSIONER'S REPORT ON BOUNDARY.

State of West Virginia)
vs. (*In Chancery.*
Henry C. King et al.)

This cause came on to be further heard upon the original and several amended bills and exhibits therewith and the original and several amended petitions of Henry C. King, the several answers and petitions of other defendants heretofore filed, the former orders and decrees made in the cause, and the exhibits filed with said several answers and petitions, and other papers filed in the cause, and especially upon the report of Commissioner John T. Graham on the question of the location and boundary of the tract of land involved in this suit and the evidence, papers and maps returned with said report, which report was returned and filed in this cause on the 6th day of April 1903, and upon divers and sundry exceptions to said report, and to each and every finding thereof, which exceptions were heretofore filed by orders entered in this cause, and which were set down for argument, and the court, after argument by counsel for the State, and for the defendant, Henry C. King as well as by counsel for the other defendants, being of the opinion that it is proper before the said defendants introduce their evidence in support of or relating to the other issues and defences raised or that might be raised in this cause, first, to determine and fix the true and proper location of

the tract of land involved in this suit and mentioned and set forth in the original and amended bills of complaint filed by the plaintiff in this cause, as having been granted to Robert Morris by the Commonwealth of Virginia by letters patent bearing date the 23rd day of June 1795, and in the said letters patent described as containing 500,000 acres.

page 587.]

And the court being now fully advised in the premises and being of the opinion that said report of Commissioner Graham, on said question of location and boundary of said grant is erroneous except, in so far as said report fixes the beginning corner of said tract on Muzzle Fork of Little Huff's Creek at the two poplar stumps and two fallen chestnuts found by said Commissioner to be at the former location of two poplars and two chestnuts mentioned and described in said grant, and indicated by the letter "A" on the map made by G. S. Stone, and returned with said Commissioner's report as part thereof; and also except, in so far as said report fixes the second corner of said tract at a point on the Northwest bank of Knox Creek found by said Commissioner to be the former location of four white oaks called for in the grant, corner of the survey of 320,000 acres, made for Wilson Cary Nicholas and Jacob Kinney, and except in so far as said report fixes the boundary line between said two corners. The finding of said report as to the said two corners and as to the boundary line between them is approved and confirmed, but all the findings and conclusions of said report as to the other boundary lines of said grant are adjudged, ordered and decreed to be erroneous and contrary to the evidence and the law. And it further appearing to this court that the two tracts of land in which William H. Lawson, Trustee, claims an estate in fee simple in the minerals containing 156.1 acres and 100 acres respectively referred to by said Commissioner as within the boundaries of said Morris grant as found by him are without the boundaries of said Morris grant as found by this court, and hereafter stated in this decree. Said report and findings of said commissioner as to said two Lawson tracts of land are hereby adjudged, ordered and

decreed to be erroneous and contrary to the evidence
page 588.] and the law. And it is further adjudged, ordered and decreed that said report and said findings, save as hereinbefore excepted, be and the same are hereby set aside and for naught holden.

And the court now *proceedings* upon all of the evidence and record of the cause to locate said tract of land upon the ground, and to define the boundaries and abuttals thereof, doth hereby further adjudge, order and decree, that said tract of land mentioned and set forth in the original and amended bills of complaint filed in this cause as having been granted to Robert Morris by the Commonwealth of Virginia by letters patent, bearing date on the 23rd day of June 1795, is located upon the ground by the lines laid down upon the "Stone Map" filed and returned with said Commissioner Graham's report, and for identification marked "Judgment Map", by the lines A to P, P to Q 2, Q 2 to Z Z, Z Z to M O, M O to M M, and M M to A, and more particularly described as follows:

Beginning at a marked poplar tree, poplar stump and two fallen chestnuts on the Northwest bank of the left hand fork of Muzzle Creek, waters of the Guyandotte River, and about four miles from the mouth of Little War Creek, a branch of the Tug Fork of Sandy River, being a corner of the survey of Wilson Cary Nicholas of 480,000 acres, and a survey of 320,000 acres, made for said Nicholas and Jacob Kinney, said point being designated on the "Stone Map" by the letter "A", and with a line of the letter South thirty-seven degrees West four thousand, four hundred and eighty (4480) poles crossing a dividing ridge, crossing Tug River near the mouth of Little War Creek, and crossing Panther Creek, to a point on the Northwest bank of Knox Creek six poles below the mouth of Whitecak Camp Branch, which point is found to be the former location of the four white oaks called for in the grant, and is designated on said "Stone Map" by the letter P; thence leaving said survey North eighty-six (86)
page 589.] degrees West about two thousand three hundred (2300) poles crossing Knox Creek and some branches

thereof and along some of the spurs of ridges to a stake near the right fork of Race Fork, a branch of Knox Creek, the same being the point of intersection of the line just described with the third line of the grant and next below described, reversed from its termination on the Guyandotte River below the mouth of Gilbert Creek, which stake and point of intersection is designated on "Stone Map" by the letter and figure "Q 2"; thence North thirty-seven (37) degrees and twenty minutes (20) East six thousand, four hundred and thirty-four (6434) poles crossing Knox Creek, crossing Tug River at the mouth of Turkey Creek, the Northwest Fork of Turkey Creek, two *forks* of the Spring Fork of Ben Creek, the dividing ridge between Tug and Guyandotte Rivers and crossing Gilbert Creek twice to a stake in the bottom of the Guyandotte River about twenty (20) poles below the former mouth of Gilbert creek which point is found to be the point described in the grant as three sugar trees in a bottom of Guyandotte River about twenty (20) poles below the mouth of Gilbert Creek, and is designated on said "Stone Map" by the letters "ZZ"; thence North fourteen (14) degrees East crossing Guyandotte River several times and several branches of the same and some ridges, the full distance of four thousand four hundred and fifty (4450) poles, being the point described in the grant as "to pointers", and designated on said "Stone Map" by the letters "M O"; thence South three (3) degrees and fourteen (14) minutes East four thousand, three hundred and fifty-five (4355) poles, crossing several branches of the Guyandotte River and crossing said river to a stake on the Southwest bank thereof, a short distance below and opposite the mouth of Big Cub Creek, and being the Northwest corner of said survey of Wilson Cary Nicholas of four hundred and eighty thousand acres and designated on said "Stone Map" by the letters "M M," and thence with one line of said four hundred and eighty thousand acre survey South four (4) degrees West, two thousand, seven hundred and eighty (2780) poles to the place of beginning.

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The courses given in the foregoing description are according to the declination of the magnetic needle in the year 1895, a

variation of four (4) degrees East since the date of the said Morris grant.

It being agreed by counsel that the evidence, papers and maps returned by said Commissioner Graham with and as part of his said report on the boundary of the said Morris grant together with the evidence in the printed record upon the former appeal in this cause are all the evidence, papers and maps introduced by the parties before, and heard by him, and are the same evidence, papers and maps recited in this decree.

page 591.] DECREE DISMISSING AS TO LANDS CLAIMED BY EGBERT MILLS AND ASSOCIATES.

State of West Virginia.

At a Circuit Court held in and for the County of Marion, at the Court house thereof, on the 7th day of December, 1905, the following decree was entered. The Honorable John W. Mason, Judge of said Court on the Bench.

STATE OF WEST VIRGINIA
vs.) *In Chancery.*
Henry C. King, et al,

This cause coming on to be heard upon the separate motions of Egbert Mills, Egbert Mills, Trustee, Arthur D. Bright, Arthur D. Bright, Trustee, William H. Lawson, Trustee, and William Kronenwett, to dismiss certain lands described in said motions under section 6, chapter 105, of the Code as amended by Chapter 42 of the Act of 1905.

The said Several motions of Egbert Mills, Egbert Mills, trustee, Arthur D. Bright, Arthur D. Bright, Trustee, William H. Lawson, Trustee, and William Kronenwett, having been argued by counsel for the State for the defendant, Henry C. King, and for the said defendants making said motions, and the court being fully advised in the premises; and upon consideration, the court being of the opinion, and finding that the

said separate motions of the defendants, Egbert Mills, Egbert Mills, Trustee, Arthur D. Bright, Arthur D. Bright trustee, William H. Lawson, Trustee, and William Kronenwett, to dismiss the lands mentioned and described therein from this suit under section 6, of chapter 105 of the Code as amended by chapter 42 of the Acts of 1905, should be granted, and all the lands mentioned and described in said several motions dismissed from this suit.

And it also appearing, and the court finding
page 592.] from the evidence in this cause, including among other evidence that of Ernest Gaujot this day filed herein, that the said tracts of land mentioned and described in said several motions lie wholly outside of the boundaries of the tract of land involved in this suit, and mentioned and set forth in the original and amended bills of complaint filed by the plaintiff in this cause as having been granted to Robert Morris by the Commonwealth of Virginia, by letters patent bearing date the 23rd day of June, 1795, as the boundaries of said tract have been defined by this court in a decree entered in this cause at this term, and constitute no part or parcel of the said tract of land mentioned and set forth in the original and amended bills of complain in this cause, as having been granted to Robert Morris by the letters patent aforesaid, and are not properly involved in this cause as parts of the said tract of land mentioned and set forth in the original and amended bills of complaint in this cause as having been granted to Robert Morris by the letters patent aforesaid; and that the State of West Virginia is without title to said tracts by the forfeiture of the said tract of land mentioned and set forth in the original and amended bills of complaint in this cause, as having been granted to Robert Morris by the letters patent aforesaid; and is without right to proceed against said tracts of land, or any of them, for their sale under said forfeiture.

And the Court being of the opinion that it is not necessary or proper for said defendants, making said motion, to introduce any evidence on any other question, or make proof of

any other matters of defense specified in their answers in this cause, in respect to said several tracts of land; and the Court therefore, not having heard or tried any other matters of defense, and being of the opinion that said tracts of land, and each of them, should be dismissed from this suit as

page 593.] properly involved in this controversy,

It is therefore ordered, adjudged and decreed, and the court doth hereby order, adjudge and decree, that the original bill of complaint and the first, second, third, fourth, fifth, sixth and seventh amended bills of complaint filed in this cause, and this suit be, and this suit and said bills are hereby dismissed as to each and all the tracts of land described in the said several motions, to wit:

All those tracts of land described in the following letters patent issued by the Governors of Virginia and West Virginia, and in the following conveyances or instruments made by the commissioner of School lands of Logan County: (certified *copies* of which have been filed in this suit with said motions).

1.—Patent issued by the Governor of Virginia, bearing date the 1st day of October 1859 to Thomas E. Browning and John R. Browning, for forty-three (43) acres of land, more or less situate on the Spring fork of the right hand fork of Ben Creek.

2. Patent issued by the Governor of Viriginia, bearing date the 1st day of February, 1859, to Aly Hatfield, for 330 acres of land, more or less, situate on the left hand fork of Ben Creek.

3. Patent issued by the Governor of Virginia, bearing date the 1st day of February, 1859, to Aly Hatfield, for 450 acres of land, more or less, situate on the Left hand fork of Ben Creek, waters of the Tug Fork of Sandy River.

4. Patent issued by the Governor of Virginia, bearing date the 1st day of February, 1859, to Aly Hatfield, for 72 acres of land, more or less, situate on the left-hand fork of the Left-hand fork of Ben Creek of Sandy River.

5. Patent issued by the Governor of Virginia, bearing date

the 2nd day of February, 1852, to Arthur White, for 35 acres of land, more or less, situate on the Elk fork of
page 594.] Pigeon Creek of Sandy River.

6. Patent issued by the Governor of Virginia, bearing date the 30th day of September, 1848, to Arthur White, for 49 acres of land, more or less, situate on the Elk Fork of Pigeon Creek of Sandy River.

7. Patent issued by the Governor of Virginia, bearing date the 2nd day of February, 1852, to Arthur White, for 11 acres of land, more or less, situate on Elk fork of Pigeon Creek.

8. Patent issued by the Governor of Virginia, bearing date to 30th day of September, 1843, to Henry Farley, for 20 acres of land, more or less, situate on Dans branch of Sandy River.

9. Patent issued by the Governor of Virginia, bearing date the 31st day of March, 1846, to Ephriam Hatfield, for 45 acres of land, more or less, situate on the Double Camp fork of Mates Creek of Sandy River.

10. Patent issued by the Governor of Virginia, bearing date the 30th day of June, 1845, to John Passley, for 20 acres of land, more or less, situate on the 5 mile fork of the Elk fork of Pigeon Creek, waters of Sandy River.

11. Patent issued by the Governor of Virginia, bearing date the 25th day of August, 1835, to James White, Jun., for 75 acres of land, more or less, situate on the Elk fork of Pigeon, waters of Sandy River.

12. Patent issued by the Governor of West Virginia, bearing date the 3rd day of February, 1871, to George R. C. Floyd, for 6,000 acres of land, more or less, situate on the waters of Pigeon and Island Creeks.

13. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 14th day of March, 1889, conveying or purporting to convey to Joseph Hatfield, a certain tract or parcel of
page 595.] land situate, lying and being in the County of Logan, (now Mingo) on Ben Creek, a branch of

Sandy River, described by metes and bounds, and as containing 140 acres, more or less.

14. Conveyance or instrument executed by L. D. Chambers, Commissioner of School lands of Logan County, bearing date the 29th day of May, 1883, conveying or purporting to convey to Floyd Hatfield, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) on Mates Creek a branch of Tug Fork of Sandy River, described by metes and bounds, and as containing 95 1/2 acres, more or less.

15. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 12th day of June, 1883, conveying or purporting to convey to Ephriam Hatfield, a certain tract or parcel of land situate, lying and being in the County of Logan (now Mingo) and on Beech Creek of Sandy River, described by metes and bounds, and as containing 114 acres, more or less.

16. Conveyance or instrument executed by L. D. Chambers, commissioner of School Lands of Logan County, bearing date the 4th day of June, 1883, conveying or purporting to convey to Richard Canada, a certain tract or parcel of land situate, lying and being in the county of Logan, (now Mingo) and on Beech Creek, a branch of Sandy River, described by metes and bounds, and as containing 191 1/2 acres, more or less.

17. Conveyance or instrument executed by Ulysses Hinchman, Commissioner of School Lands of Logan County, bearing date the 2nd day of June, 1881, conveying or purporting to convey to Richard Canada, a certain tract or parcel or land situate, lying and being in the county of Logan, (now Mingo) and on Beech Creek of Sandy River, described by metes and bounds, and as containing 140 acres, more or less.

page 596.] 18. Conveyance or instrument executed by Ulysses Hinchman, Commissioner of School Lands of Logan County, bearing date the 2nd day of June, 1881, conveying or purporting to convey to Richard Canada, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Beech creek of Sandy River,

described by metes and bounds, and as containing 187 acres, more or less.

19. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 13th day of October, 1887, conveying or purporting to convey to Martha Chaffin, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the Middle fork of Elk Creek of Pigeon Creek, described by metes and bounds, and as containing 240 acres, more or less.

20. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 8th day of October, 1887, conveying or purporting to convey to Martha *Chafin*, a certain tract or parcel of land situate, lying and being on the County of Logan, (now Mingo) and on the ridge between the Right-hand fork of Elk and the Middle fork of Elk, and the Rock-House fork of Pigeon, described by metes and bounds, and as containing 363 acres, more or less.

21. Conveyance or instrument executed by L. D. Chambers, commissioner of School Lands of Logan County bearing date the 12th day of March, 1889, conveying or purporting to convey to H. P. Duty, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Pigeon Creek and Grant's branch of same, described by metes and bounds, and as containing 505 acres, more or less.

22. Conveyance or instrument executed by Ulysses Hinchman, Commissioner of School Lands of Logan
page 597.] County, bearing date the 5th day of April, 1871, conveying or purporting to convey to Thomas B. Farley, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) on the waters of Elk fork of Pigeon Creek, described by metes and bounds, and as containing 328 acres, more or less.

23. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 12th day of April, 1888, conveying or purporting to convey to William A. Farley, a certain tract or parcel of land

situate, lying and being in the county of Logan, (now Mingo) and on the Right-hand fork of the Elk fork of Pigeon Creek, described by metes and bounds, and as containing 89 acres, more or less.

24. Conveyance or instrument executed by Ulyses Hinchman, Commissioner of School Lands of Logan County, bearing date the 5th day of April, 1871, conveying or purporting to convey to William A. Farley, two certain tracts or parcels of land situate, lying and being in the County of Logan, (now Mingo) on the Elk fork of Pigeon Creek and the waters thereof, described by metes and bounds, and as containing 52 acres, more or less, and 235 acres, more or less, respectively.

25. Patent issued by the Governor of Virginia, bearing date the 31st day of December, 1844, to Jacob D. Ellis and Elijah Ferrell, for 63 acres of land, more or less, situate on the head of Pigeon Creek of Sandy River.

26. Patent issued by the Governor of Virginia, bearing date the 1st day of December, 1855, to Jesse Browning, for 80 acres of land, more or less, situate on the South side of Pigeon Creek.

27. Patent issued by the Governor of Virginia, bearing date the ..... day of ..... 18....., to Aly Hatfield, Jr. for 150 acres of land, more or less, situate on Ben Creek of Sandy River.

28. Patent issued by the Governor of Virginia,
page 598.] bearing date the 31st day of December, 1847, to Joseph Hatfield, Jr., for 30 acres of land, more or less, situate on Ben Creek, waters of Sandy River.

29. Patent issued by the Governor of Virginia, bearing date the 15th day of June, 1821, to James Muncy, for 50 acres of land, more or less, situate on Big Pigeon Creek, a branch of the left hand fork of Sandy River.

30. Patent issued by the Governor of West Virginia, bearing date the 28th day of June, 1873, to Evermont Ward and Hoffman Allen and Louisa C. Allen, children and devisees of John Allen, deceased, for 700 acres of land, more or less, situate on the lower side of Gilbert's Creek of Guyandotte River.

31. Patent issued by the Governor of West Virginia, bearing date the 29th day of May, 1884, to the heirs of Jesse Browning, deceased, for 432 acres of land, more or less, situate on the left hand fork of Ben Creek, a branch of Sandy River.

32. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 12th day of March, 1889, conveying or purporting to convey to James Hatfield, a certain tract or parcel of land, situate, lying and being in the County of Logan, and on Ben Creek of Sandy River, described by metes and bounds, and as containing 470 acres, more or less.

33. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 29th day of July, 1883, conveying or purporting to convey to James M. Laidley, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Mates Creek, a branch of Sandy River, described by metes and bounds, and as containing 141 acres, more or less.

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34. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 16th day of March, 1889, conveying or purporting to convey to Madison Hatfield, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the south side of Pigeon Creek next to Mate, described by metes and bounds, and as containing 229 acres, more or less.

35. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 24th day of August, 1888, conveying or purporting to convey to L. D. Varney, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the Rock House Fork of Pigeon Creek, described by metes and bounds, and as containing 114 acres, more or less.

36. Conveyance or instrument executed by William Straton, Commissioner of School Lands of Logan County, bearing date

the 1st day of March, 1882, conveying or purporting to convey to Henry C. Varney, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the Rock House Fork of Pigeon Creek, a branch of Sandy River, described by metes and bounds, and as containing 99 acres, more or less.

37. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 25th day of March, 1889, conveying or purporting to convey to Jacob Ferrell, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the Little Muncy Fork of Pigeon Creek, described by metes and bounds, and as containing 432 acres, more or less.

38. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan, bearing date the 25th day of March, 1889, conveying or purporting to convey to Jacob Ferrell, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the south side of the Big Muncy branch of Main Pigeon Creek, described by metes and bounds, and as containing 457 acres, more or less.

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39. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 25th day of March, 1889, conveying or purporting to convey to Jacob Ferrell, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the Big Muncy Fork of Pigeon Creek, described by metes and bounds, and as containing 270 acres, more or less.

40. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 20th day of October, 1885, conveying or purporting to convey to Moses Mounts, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Gilbert's Creek, described by metes and bounds, and as containing 112 acres, more or less.

41. Conveyance or instrument executed by L. D. Chambers,

Commissioner of School Lands in Logan County, bearing date the 16th day of February, 1889, conveying or purporting to convey to Floyd Music, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the Slick Rock branch of Pigeon Creek, described by metes and bounds, and as containing 428 acres, more or less.

42. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 16th day of February, 1889, conveying or purporting to convey to Floyd Music, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the Roves branch of Pigeon Creek, described by

page 601] metes and bounds, and as containing 226 acres, more or less.

43. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 8th day of March, 1887, conveying or purporting to convey to L. F. Smith and Emma Smith, two certain tracts or parcels of land situate, lying and being in the County of Logan, (now Mingo) and on the Straight branch of Mates Creek, described by metes and bounds, and as containing 103 acres, more of less, and 61 acres, more or less, respectively.

44. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 10th day of November, 1884, conveying or purporting to convey to Enoch Gibson, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo and on the Big fork ridge of Ben Creek, a branch of Sandy River, described by metes and bounds, and as containing 372 acres, more or less.

45. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 26th day of July, 1886, conveying or purporting to convey to Alexander Trent, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Ben and Gilberts Creek, described by metes and bounds, and as containing 205 acres, more or less.

46. Patent issued by the Governor of Virginia, bearing date the 1st day of May, 1855, to Alexander Mounts, for 60 acres of land, more or less, situate on the Foundation Fork of Beech Creek of Sandy River.

47. Patent issued by the Governor of Virginia, bearing date the 1st day of August, 1851, to Alexander Mounts, for 60 acres of land, more or less, situate on the Double Camp fork of Beech Creek of Sandy River.

page 602.] 48. Patent issued by the Governor of Virginia, bearing date the 2nd day of August, 1853, to Warren Alderson, for 150 acres of land, more or less, situate on Beech Creek of Sandy River.

49. Patent issued by the Governor of Virginia, bearing date the 1st day of November, 1859, to Richard Ratcliff, for 1340 acres of land, more or less, situate on Stafford's branch, Laurel's branch and Grant's branch.

50. Patent issued by the Governor of Virginia, bearing date the 30th day of June, 1847, to William Cline, for 74 acres of land, more or less, situate on Sandy River.

51. Patent issued by the Governor of Virginia, bearing date the 1st day of May, 1855, to Warren Alderson, for 289 acres of land, more or less, situate on the upper side of Beech Creek of Sandy River.

52. Patent issued by the Governor of Virginia, bearing date the 1st day of September, 1856, to Warren M. Alderson, for 33 acres of land, more or less, situate on Beech Creek of Sandy River.

53. Patent issued by the Governor of Virginia, bearing date the 15th day of June, 1821, to Thomas Smith, for 15 acres of land, more or less, situate on the Left-hand fork of Sandy River.

54. Patent issued by the Governor of Virginia, bearing date the 1st day of February, 1859, to Henry Varney, for 35 acres of land, more or less, situate on the Rock House fork of Pigeon Creek.

55. Patent issued by the Governor of Virginia, bearing date the 1st day of September, 1856, to Ralph Steel, for 22 acres of land, more or less, situate on the Left-hand fork of the three forks of Island Creek.

56. Patent issued by the Governor of Virginia, bearing date the 1st day of December, 1851, to James Brewster, for 55 acres of land, more or less, situate on the Rock House fork of Pigeon Creek.

57. Patent issued by the Governor of Virginia,
page 603.] bearing date the 2nd day of August, 1858, to Pleasant Chaffin, for 154 acres of land, more or less, situate on the Rock House fork of Pigeon Creek.

58. Patent issued by the Governor of Virginia, bearing date the 1st day of January, 1862, to George W. Duty, for 350 acres of land, more or less, situate on the Rock House fork of Pigeon Creek, waters of Sandy River.

59. Patent issued by the Governor of Virginia, bearing date the 31st day of August 1843, to Andrew Varney, for 23 acres of land, more or less, situate on the Rock House fork of Pigeon Creek, waters of Sandy River.

60. Patent issued by the Governor of Virginia, bearing date the 2nd day of July, 1855, to Levi Vance for 54 acres of land, more or less, situate on the Browning fork of the Horsepen fork of Gilberts, and the the Left-hand fork of the three forks of Island creek.

61. Patent issued by the Governor of West Virginia, bearing date the 5th day of March, 1875, to Levi Vance and L. D. Steele, for 400 acres of land, more or less, situate on the Left-hand fork and Conley fork of Island creek of Guyandotte River.

62. Patent issued by the Governor of Virginia, bearing date the 1st day of August, 1836, to Andrew Varney, for 50 acres of land, more or less, situate on Rockhouse fork of Big Pigeon Creek.

63. Patent issued by the Governor of Virginia, bearing date the 1st day of February, 1855, to Andrew Varney, for 50 acres of land, more or less, situate on Rockhouse fork of Pigeon Creek.

64. Patent issued by the Governor of Virginia, bearing date the 30th day of June, 1845, to John Lawson, for 25 acres of land, more or less, situate on Sandy River and Beech Creek.

65. Conveyance or instrument executed by L. D.
page 604.] Chambers, Commissioner of School Lands of Logan County, bearing date the 22nd day of October, 1886,

conveying or purporting to convey to Martha Steel, a certain tract or parcel of land situte, lying and being in the County of Logan, (now Mingo) and on Beech Creek, a branch of Sandy River, described by metes and bounds, and as containing 37 acres, more or less.

66. Conveyance or instrument executed by William Straton, Commissioner of School Lands of Logan County, bearing date the 1st day of May, 1882, conveying or purporting to convey to Joseph Simpkins, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Beech Creek, a branch of Sandy River, described by metes and bounds, and as containing 63 acres, more or less.

67. Conveyance or instrument executed by William Straton, Commissioner of School Lands of Logan County, bearing date the 1st day of May, 1882, conveying or purprting to convey to Joseph Simpkins and Samuel Simpkins, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Beech creek of Sandy River, described by metes and bounds, and as containing 58 acres, more or less.

68. Conveyance or instrument executed by U. B. Buskirk, commissioner of School Lands of Logan County, bearing date the 10th day of June, 1890, conveying or purporting to convey to Joseph Simpkins, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the Joe Simpkin branch of Beech Creek of Tug river, described by metes and bounds, and as containing 123 acres, more or less.

69. Conveyance or instrument executed by Ulysses Hinchman, Commissioner of School Lands of Logan County, bearing date the 23rd day of July, 1881, conveying or purporting to convey to Elijah Mounts, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) on Beech Creek, described by metes and bounds, and as containing 49½ acres, more or less.

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70. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the

10th day of November, 1884, conveying or purporting to convey to Elijah Mounts, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Beech Creek, a branch of Sandy River, described by metes and bounds, and as containing 277 acres, more or less.

71. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 9th day of June, 1884, conveying or purporting to convey to Polly Tiller and Elijah Mounts, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Beech Creek, a branch of Sandy River, described by metes and bounds, and as containing 70 acres, more or less.

72. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 20th day of October, 1888, conveying or purporting to convey to William Straton, a certain tract or parcel of land, situate, lying and being in the county of Logan, (now Mingo) and on the Joe Simpkins branch of Beech Creek of Sandy River, described by metes and bounds, and as containing 123 acres, more or less.

73. Conveyance or instrument executed by Ulysses Hinchman, Commissioner of School Lands of Logan County, bearing date the 29th day of July, 1881, conveying or *purting* to convey to M. B. Mullins, a certain tract or parcel of land, lying and being in the County of Logan, (now Mingo) and on the Old House Branch of Beech creek, a branch of Sandy River, described by metes and bounds, and as containing 353½ acres, more or less.

page 606.] 74. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County bearing date the 20th day of October, 1888, conveying or purporting to convey to C. W. Greever, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Beech Creek of Sandy River, described by metes and bounds, and as containing 101 acres, more or less.

75. Conveyance or instrument executed by U. B. Buskirk, Commisssioner of School Lands of Logan County, bearing date

the 6th day of May, 1890, conveying or purporting to convey to Samuel Walton and James O'Keefe, a certain tract or parcel of land among others situate, lying and being in the County of Logan, (now Mingo) and on Beech Creek and its tributaries, described as containing 100 acres, more or less.

76. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 20th day of October, 1888, conveying or purporting to convey to C. W. Brockunier, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) described by metes and bounds, and as containing 29 acres, more or less.

77. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 20th day of October, 1888, conveying or purporting to convey to C. W. Brockunier, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the Rock House Fork of Pigeon Creek, described by metes and bounds, and as containing 26 acres, more or less.

78. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 20th day of October, 1888, conveying or purporting to convey to C. W. Brockunier, a certain tract or parcel of land, situate, lying and being in the County of Logan, (now Mingo) and on the Rock house fork of Pigeon Creek, described by metes and bounds, and as containing 188½ acres, more or less.

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79. Conveyance or instrument executed by L. D. Chambers, Commissioned of School lands of Logan County, bearing date the 22nd day of May, 1888, conveying or purporting to convey to E. C. Duty, two certain tracts or parcels of land situate, lying and being in the County of Logan (now Mingo) and on the Rock House Fork of Pigeon Creek, described by metes and bounds, and as containing 498 acres, more or less, and 184 acres, more or less, respectively.

80. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the

17th day of December, 1887, conveying or purporting to convey to Lewis White, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Beech Creek of Sandy River, described by metes and bounds, and as containing 83 acres, more or less.

81. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 24th day of August, 1888, conveying or purporting to convey to Joseph Hatfield, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Ben Creek of Sandy River, described by metes and bounds, and as containing 48 acres, more or less.

82. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 10th day of February, 1887, conveying or purporting to convey to Nathan Chafin and John L. Chafin, a certain tract or parcel of land situate, lying and being in the County of Logan (now Mingo) and on the Big South Branch of the Rock house fork of Pigeon Creek, described by metes and bounds, and as containing 226 acres more or less.

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83. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 11th day of June, 1883, conveying or purporting to convey to Nancy Simpkins, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the Bush Fork of Beech Creek, described by metes and bounds, and as containing 163 acres, more or less.

84. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 4th day of October, 1883, conveying or purporting to convey to Mitchell Hatfield, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Ben Creek, a branch of Sandy River, described by metes and bounds, and as containing 151 acres, more or less.

85. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the

12th day of July, 1884, conveying or purporting to convey to H. J. Duty, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the Rock House Fork of Pigeon Creek, described by metes and bounds, and as containing 144 acres, more or less.

86. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 1st day of November, 1887, conveying or purporting to convey to William Straton, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the ridge between the Right-hand fork of Elk and the Middle fork of Elk, and the Rock House fork of Pigeon Creek, described by metes and bounds, and as containing 363 acres, more or less.

page 609.] 87. Conveyance or instrument executed by William Straton, Commissioner of School Lands of Logan County, bearing date the 1st day of May, 1882, conveying or purporting to convey to Ira L. Farley, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on the Rock House Fork of Pigeon Creek, described by metes and bounds, and as containing 27 acres, more or less.

88. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 10th day of April, 1888, conveying or purporting to convey to L. D. Steele, a certain tract or parcel of land situate, lying and being in the County of Logan, on Island Creek and the Left-hand fork of same, described by metes and bounds, and as containing 117 acres, more or less.

89. Conveyance or instrument executed by L. D. Chambers, Commissioner of School lands of Logan County, bearing date the 6th day of March, 1889, conveying or purporting to convey to William P. Floyd and James A. Nighbert, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Mate and Pigeon Creeks, described by metes and bounds, and as containing 668½ acres, more or less.

90. Conveyance or instrument executed by L. D. Chambers,

Commissioner of School Lands of Logan County, bearing date the 22nd day of October, 1886, conveying or purporting to convey to Martha Steel, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Beech Creek, a branch of Sandy River, described by metes and bounds, and as containing 87 acres, more or less.

91.. Conveyance or instrument executed by L. D. Chambers, Commission of School Lands of Logan County, bearing date the 12th day of February, 1889, conveying or purporting page 610.] to convey to Joseph Simpkins,, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) on the Sam Kanada branch of Beech creek of Sandy River, described by metes and bounds, and as containing 176 acres, more or less.

92. Patent issued by the Governor of Virginia, bearing date the 1st day of August, 1851, to Samuel Canada, for 18 acres of land, more or less, situate on the Turnip Patch branch of Beech Creek of Sandy River.

93. Patent issued by the Governor of Virginia, bearing date the 2nd day of August, 1858, to John Allen and Evermont Ward, for 4,000 acres of land, more or less, situate on the ridge between Pigeon Creek and the Rock House fork of same, waters of the Tug fork of Sandy River.

94. Patent issued by the Governor of Virginia, bearing date the *the* 2nd day of February, 1855, to Andrew Varney and William Tiller, for 125 acres of land, more or less, situate on the South side of Pigeon Creek.

95. Patent issued by the Governor of Virginia, bearing date the 1st day of December, 1851, to Ephriam Hatfield, for 125 acres of land, more or less, situate on the Meadow Branch of Mates Creek of Sandy River.

96. Patent issued by the Governor of Virginia, bearing date the 1st day of October, 1859, to Thomas E. Browning and John R. Browning, for 43 acres of land situate on the Spring fork of the Right-hand fork of Ben creek.

97. Patent issued by the Governor of Virginia, bearing date the 2nd day of August, 1852, to Joseph Hatfield, for 54 acres of land situate on the Spring fork of the Right hand fork of Ben creek.

98. Patent issued by the Governor of Virginia bearing date the 2nd day of August, 1858, to Warren M. Alderpage 611.] son, for 2740 acres of land situate on the Right hand fork of Ben creek of Sandy River.

99. Conveyance or instrument executed by L. D. Chambers, commissioner of School Lands of Logan County, bearing date the 20th day of October, 1885, conveying or purporting to convey to William Straton, two certain tracts or parcels of land among others situate, lying and being in the County of Logan; (now Mingo) one on Thackers fork of Pigeon Creek, described by *meets* and bounds, and as containing 181 acres, and the other on Pigeon Creek, described by metes and bounds, and as containing 301 acres.

100. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 5th day of May, 1886, conveying or purporting to convey to William Straton, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Pigeon Creek and Grant's branch of the same, described by metes and bounds, and as containing 452 acres.

101. Conveyance of instrument executed by Ulysses Hinchman, Commissioner of School Lands of Logan County, bearing date the 2nd day of June, 1881, conveying or purporting to convey to Thomas H. Duty, a certain tract or parcel of land situate, lying and being in the County of Logan, and on Main Island Creek, described by metes and bounds, and as containing 79 acres.

102. Conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date the 12th day of March, 1889, conveying or purporting to convey to Alexander Trent, a certain tract or parcel of land situate, lying and being in the County of Logan, (now Mingo) and on Spring

Fork of Ben Creek, described by metes and bounds, and as containing 202 acres.

page 612.] *to* which said letters patent and conveyances or instruments, and each of them, reference is hereby made for a more particular description as fully and completely as if the same were incorporated and set forth in this decree at length.

And it further appearing to the satisfaction of the Court, from the evidence taken in this cause, including among other evidence that of Ernest Gaujot this day filed herein, that the following tracts of land, to wit: All those tracts of land described in the following deeds: certified copies of which are filed in this cause, viz:

1. Deed from Thomas H. Duty and wife to Egbert Mills, Jr., Trustee, bearing date the 24th day of September, 1889, and recorded in the office of the clerk of the County Court of Logan County in Deed Book L. page 290.

2. Deed from Warren Alderson and wife to Egbert Mills, Jr., trustee, bearing date the 24th day of April, 1890, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book O, page 607.

3. Deed from Davis Bragg and wife to Egbert Mills, Jr., trustee, bearing date the 12th day of December, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, page 350.

4. Deed from Alexander Trent and wife, and M. A. Hatfield & wife, to Egbert Mills, Jr., trustee, bearing date the 16th day of December, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book O, page 227.

5. Deed from Alexander Trent and wife, and Leander Ellis and wife to Egbert Mills, Jr. Trustees, bearing date the 16th day of December, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book O, Page 329.

6. Deed from James Ferrell and wife to Egbert

page 613.] Mills, Jr., trustee, bearing date the 2nd day of December, 1895, and recorded in the office of the

Clerk of the County Court of Mingo County in Deed Book 2, Page 8.

7. Deed from Alva Music and wife, and Floyd Music and wife to James E. Price, trustee, bearing date the 1st day of August, 1890, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 513.

8. Deed from Floyd Music and wife to James E. Price, trustee, bearing date the 22nd day of March, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 155.

9. Deed from H. K. Shumate and wife to James E. Price, trustee, bearing date the 11th day of November, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 218.

10. Deed from H. K. Shumate and wife to James E. Price, Trustee, bearing date the 12th day of November, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 285.

11. Deed from Madison Hatfield and wife to James E. Price, Trustee, bearing date the 4th day of October, 1889, and recorded in the office of the Clerk of the County Court of Logan County County in Deed Book L, Page 326.

12. Deed from John L. Browning and wife to James E. Price, trustee, bearing date the 1st day of October, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 286.

13. Deed from S. S. Altizer and wife to James E. Price, trustee, bearing date the 29th day of May, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 235.

page 614.] 14. Deed from Ferrell Hatfield and wife to James E. Price, Trustee, bearing date the 8th day of October, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 288.

15. Deed from James Hatfield and wife to James E. Price, Trustee, bearing date the 8th day of October, 1889, and recorded

in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 294.

16. Deed from James Hatfield and wife to James E. Price, Trustee, bearing date the 8th day of October, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 291.

17. Deed from Enoch Gibson and wife to James E. Price, Trustee, bearing date the 7th day of October, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 293.

18. Deed from William Sansom and wife to James E. Price, Trustee, bearing date the 6th day of December, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 329.

19. Deed from Jacob Francisco to James E. Price, Trustee, bearing date the 26th day of March, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 158.

20. Deed from Anderson Hatfield and wife to James E. Price, Trustee, bearing date the 9th day of April, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 199.

21. Deed from Henry Vance and wife to William H. Lawson, bearing date the 17th day of November, 1898, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 4, Page 406.

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22. Deed from Matilda Ferrell and Jacob Ferrell, her husband, and Polly Ann Kennedy to William H. Lawson, Trustee, bearing date the 22nd day of May, 1900, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 6, Page 248.

23. Deed from L. B. Sipples and wife to William H. Lawson, Trustee, bearing date the 22rd day of May, 1900, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 6, Page 260.

24. Deed from Alva Musick and wife to Arthur Bright, Trustee, bearing date the 12th day of June, 1890, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 464.

25. Deed from John H. Varney and wife to Arthur D. Bright, trustee, bearing date the 12th day of June, 1890, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 463.

26. Deed from Calvin Curry and wife to Arthur D. Bright, trustee, bearing date the 2nd day of December, 1895, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 2, Page 2.

27. Deed from James Mahon and wife to Arthur D. Bright, Trustee, bearing date the 28th day of December, 1897, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 4, Page 56.

28. Deed from William Mahon and wife to Arthur D. Bright, trustee, bearing date the 20th day of December, 1897, and recorded in the office of the Clerk of the County Court of Mingo

in Deed Book 4, Page 58, et seq.

Deed Book 4, Page 58 et seq.

page 616.] 29. Deed from Harvey P. Duty and wife to Henry R. Phillips, Trustee, bearing date the 4th day of October, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 237.

30. Deed from H. K. Shumate, special commissioner, to Henry R. Phillips, trustee, bearing date the 26th day of October, 1892, and recorded in the office of the Clerk of the County Court of Logan Count in Deed Book Q, Page 473.

31. Deed from Joseph Hatfield and wife to Henry R. Phillips, Trustee, bearing date the 1st day of August, 1890, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 491.

32. Deed from Lewis Carey and wife to Henry R. Phillips, Trustee, etc., bearing date the 30th day of March, 1889, and record-

ed in the office of the Clerk of the County Court of Logan County in Deed Book N, Page 370.

33. Deed from Anderson Carey and wife to H. R. Phillips, trustee, etc., bearing date the 39th day of March, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book N, Page 367.

34. Deed from Alexander Varney and wife to Henry R. Phillips, Trustee, etc., bearing date the 21st day of May, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 161.

35. Deed from Alvis Varney and wife to Henry R. Phillips, trustee, etc., bearing date the 15th day of November, 1890, and recorded in the office of the Clerk of the County Court of Logan County, in Deed Book 2nd P, Page 249.

36. Deed from James Farrell and wife to Henry R. Phillips, trustee, etc., bearing date the 28th day of March, 1889, and recorded in the office of the Clerk of the County Court of
page 617.] Logan in Deed Book N, Page 362.

37. Deed from Patterson Hatfield and wife to Henry R. Phillips, trustee, etc., bearing date the 5th day of January, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 163.

38. Deed from Floyd Hatfield and wife to Henry R. Phillips, trustee, bearing date the 26th day of April, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 203.

39. Deed from Ephriam Hatfield and wife to Henry R. Phillips, Trustee, bearing date the 26 day of April, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 202.

40. Deed from Ephriam Hatfield and wife to Henry R. Phillips, Trustee, etc., bearing date the 4th day of January, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 162.

41. Deed from Richard Kennada and wife to Henry R. Phillips,

Trustee, etc., bearing date the 25th day of March, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book N, Page 352.

42. Deed from F. M. Kenneda and wife to Henry R. Phillips, trustee, etc., bearing date the 13th day of April, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 197.

43. Deed from Michael Mounts and wife to Henry R. Phillips, Trustee, bearing date the 12th day of November, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 331.

44. Deed from Franklin Francisco and wife to
page 618.] Henry R. Phillips, Trustee, etc., bearing date the 27th day of March, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book N, Page 198.

45. Deed from W. J. Kennada and wife to Henry R. Phillips, Trustee, etc., bearing date the 13th day of April, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 196.

46. Deed from John Kennada and wife to Henry R. Phillips, trustee, etc., bearing date the 13th day of April, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 201.

47. Deed from Smith Hatfield and wife, and Patterson Hatfield and wife to Henry R. Phillips, trustee, bearing date the 12th day September, 1898, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book 4, Page 318.

48. Deed from Moses Farrell, Commissioner of School Lands of Mingo County, to H. R. Phillips, trustee, bearing date the 29th day of March, 1897, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 3, Page 164.

49. Deed from Joseph Hatfield and wife to Henry R. Phillips, Trustee, bearing date the 15th day of October, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book Big P, Page 6.

50. Deed from Nathan Chafin and wife, and Lewis Chafin and wife to William Kronenwett, bearing date the 8th day of March, 1901, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 7, Page 123.

51. Deed from Nathan Chafin and wife, and Lewis Chafin and wife to William Kronenwett, bearing date the 8th day of March, 1901, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 8, Page 88.

page 619.]

52. Deed from Nathan Chafin and wife to William Kronenwet, bearing date the 8th day of March, 1901, and recorder in the office of the Clerk of the County Court of Mingo County in Deed Book 8, Page 85.

53. Dee from Sherd Curry and wife, Charles Duty, Isom Duty and wife, George Duty and wife, Alexander Duty and Sarah Duty to William Kronenwett, bearing date the 10th day of April, 1901, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 8, Page 122.

54. Deed from Christopher Chafin and wife to William Knonenwett, bearing date the 13th day of July, 1901 ,and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 7, Page 211.

55. Deed from C. W. Campbell and wife to William Kronenwett, bearing date the 17th day of November, 1902, and recorded in the office of the Clerk of the County Court of Mingo County in deed book 13, Page 97.

56. Deed from Rutha Staten and Evermont Staten, her husband, to William Kronenwett, bearing date the 11th day of January, 1902, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 7, Page 471.

57. Deed from Justin K. Anderson and wife to William Kronenwett, bearing date the 9th day of January, 1902, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 7, Page 479.

58. Deed from Mitchell A. Hatfield and wife to William

Kronenwett, bearing date the 1st day of May, 1903, and recorded in the office of the Clerk of the County Court of
page 620.] Mingo County in Deed Book 12, Page 96.

59. Deed from Mitchell A. Hatfield and wife, and James Hatfield and wife to William Kronenwett, bearing date the 1st day of May, 1903, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 12, Page 88.

60. Deed from Bank of Williamson, of Williamson, W. Va. to William Kronenwett, bearing date the 26th day of July, 1902, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 10, Page 281.

61. Deed from Julius C. Williamson and wife to William Knonenwett, bearing date the 26th day of July, 1902, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 10, Page 308.

62. Deed from George F. Browning and wife to William Kronenwett, bearing date the 24th day of February, 1903, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 11, page 135.

63. Deed from Joseph F. Paull and wife, and Charles W. Brockunier and wife to William Kronenwett, bearing, bearing date the 8th day of November, 1902, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 9, Page 276.

64. Deed from Joseph F. Paull and wife, and Charles W. Brockunier and wife to William Kronenwett, bearing date the 8th day of November, 1902, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 9, page 283.

65. Deed from Joseph F. Paull and wife, and E. H. Stewart and wife to William Kronenwett, bearing date the 12th day of December, 1902, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 9, Page 421.

66. Deed from Joseph F. Paull and wife and
page 621.] E. H. Stewart and wife to William Kronenwett,

bearing date the 10th day of March, 1903, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 12, Page 80.

67. Deed from Julius C. Williamson and wife to William Kronenwett, bearing date the 26th day of July, 1902, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 10, Page 312.

68. Deed from James Hatfield and wife to William McGee and Robert C. Allison, bearing date the 23rd day of May, 1902, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 10, Page 306.

69. Deed from Charles Daniels and wife to William McGee and Robert C. Allison, bearing date the 24th day of May, 1902, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 10, Page 291.

70. Deed from John L. Browning and wife to William McGee and Robert C. *Allisob*, bearing date the 24th day of May, 1902, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 10, page 296.

71. Deed from Ferrell Hatfield and wife to William McGee and Robert C. Allison, bearing date the 23rd day of May, 1902, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 10, Page 302.

72. Deed from Grayton Mining Company to Earnest Gaujot, bearing date the 29th day of April, 1902, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 9, Page 401.

73. Deed from Grayton Mining & Improvement Company to Ernest Gaujot, bearing date the 29th day of April, 1902, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 9, Page 414.

74. Deed from A. D. Simpkins and wife to Ernest
page 622.] Gaujot, bearing date the 30th day of June, 1902, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 10, Page 286.

75. Deed from R. C. Allison and William McGee to the United

Thacker Coal Company, bearing date the 9th day of August, 1905, and recorded in the office of the Clerk of the County Court Mingo County in Deed Book 13, Page 347.

76. Deed from S. S. Vinson and wife to R. H. Prichard, bearing date the 19th day of January, 1887, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book J, Page 406.

77. Deed from Lewis Varney and wife, and L. D. Varney to James E. Price, trustee, bearing date the 28th day of March, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 200.

78. Deed from William A. Farley and wife to Henry R. Phillips, Trustee, etc., bearing date the 29th day of March, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book N, Page 363.

79. Deed from Martha Chaffin to Henry R. Phillips, trustee, etc., bearing date the 30th day of March, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book N, Page 354.

80. Deed from Jacob Ferrell and wife to Henry R. Phillips, trustee, etc., bearing date the 30th day of January, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book N, Page 191.

81. Deed from James Damron, Clerk of the County Court of Mingo County, to William Kronenwett, bearing date the 18th day of December, 1903, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 12, page 402.

page 623.]

To which said deed and each of them reference is hereby made for a more particular description, as fully and completely as if the same were incorporated and set forth in this decree at length.

SECOND: All those three tracts of land; one containing 181 acres, more or less; another 295 acres, more or less, and the other 267 acres, more or less described in the deed from William Straton and wife to Egbert Mills, Jr., Trustee, bearing

date the 24th day of April, 1890, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 419, and being the first, second and third tracts mentioned and described in said deed, to which said deed, a certified copy of which is duly filed in this cause, reference is hereby made for a more particular description, as fully and completely as if the same were incorporated and set forth in this decree at length.

Third: That tract of land containing 140 acres, more or less, described in the deed from Alexander Trent and wife to Egbert Mills, Jr., trustee, bearing date the 16th day of December, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 333, and being the second tract mentioned and described in said deed, to which said deed, a certified copy of which is duly filed in this cause, reference is hereby made for a more particular description, as fully and completely as if the same were incorporated and set forth in this decree at length.

Fourth: That tract of land containing 256 acres, more or less, mentioned and described in another deed from Alexander Trent and wife to Egbert Mills, Jr., trustee, bearing date the 16th day of December, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book L, Page 328, and being the first tract mentioned and described in said deed, to which said deed, a certified copy of which is duly filed in this cause, reference is hereby made for a more particular description, as fully and completely as if the same were incorporated and set forth in this decree at length.

page 624.]

Fifth: That tract of land containing 582 acres, more or less, mentioned and described in the deed from J. B. Wilkinson, Special Commissioner, and H. K. Shumate to James E. Price, Trustee, bearing date the 29th day of May, 1889, and recorded in the office of the Clerk of the County Court of Logan County in Deed Book N, Page 500, and being the first tract mentioned and described in said deed, to which said deed, a certified copy of which is duly filed in this cause, reference is hereby made for a more particular

description as fully and completely as if the same were incorporated and set forth in this decree at length.

Sixth: That tract of land containing 12.9 acres, more or less, mentioned and described in the deed from John A. Sheppard and wife and *wells* Goodykoontz and wife, and Wells Goodykoontz trustee, to the United Thacker Coal Company, bearing date the 25th day of November, 1904, and recorded in the office of the Clerk of the County Court of Mingo County in Deed Book 13, page 352, and being the second tract mentioned and described in said deed, to which said deed, a certified copy of which is duly filed in this cause, reference is hereby made for a more particular description, as fully and completely as if the same were incorporated and set forth in this decree at length.

Also lie without the boundaries of the said tract
page 625.] of land involved in this suit and mentioned and set forth in the original and amended bills of complaint in this cause, as having been granted to Robert Morris by the Commonwealth of Virginia by the letters patent bearing date the 23rd day of June, 1795, as said boundaries have been defined by this court in a decree entered in this cause at the present term thereof, and constitute no part or parcel of the said tract of land mentioned and set forth in the original and amended bill of complaint in this cause as having been granted to Robert Morris by the Commonwealth of Virginia by the letters patent aforesaid, and are not properly involved in this cause as parts of said tract of land mentioned and set forth in the original and amended bills of complaint in this cause as having been granted to Robert Morris by the Commonwealth of Virginia by the letters patent aforesaid, and that the said State of West Virginia is without title to said tracts of land last above mentioned and described, or any of said tracts, by the forfeiture of the said tract of land mentioned and set forth in the original and amended bills of complaint in this cause as having been granted to Robert Morris by the Commonwealth of Virginia by the letters patent aforesaid, and without right to

proceed against said tracts of land, or any of them, for their sale under said forfeiture.

And the Court being of the opinion that it is not necessary or proper for said defendants, making said motion, to introduce any evidence on any other question, or make proof of any other matters of defense specified in their answers in this cause, in respect to said several tracts of land, and the court therefore, not having heard or tried any other matters of defense, and being of the opinion that said tracts of land, and each of them, should be dismissed from this suit as not properly involved in this controversy.

page 626.] It is therefore, on motion of various parties to this cause interested in said lands, further ordered, adjudged and decreed, and the Court doth hereby further order, adjudged and decree, that the original bill of complaint, and the first, second, third, fourth, fifth, sixth, and seventh amended bills of complaint filed in this cause, and this suit be, and this suit and said bills are hereby dismissed as to each and all of said tracts of land last above mentioned and described.

page 627.] DECREE DISMISSING AS TO LANDS OF W. J. CANADY.

And at another day of said Circuit Court, to-wit, on the 7th day of December, 1905, the following decrees were entered:

State of West Virginia,
vs. (*In Chancery.*
Henry C. King, et als.

This day this cause came on to be further heard, and the defendant William J. Canady moved the court to dismiss from this suit the land described in a certain order entered herein on his motion on the 12th day of July, 1905, under and by virtue of section 6 of chapter 105 of the Code, as amended by chapter 42, of the Acts of

the Legislature at its session of 1905, and further because the said tracts of land mentioned and set forth in said order are situated outside of the tract sought to be sold in this suit for the benefit of the school fund, and in this proceeding referred to as the Morris grant, from the Commonwealth of Virginia bearing date June 24th, 1795. Upon consideration whereof, and it appearing to the court that said tracts of land are located outside of the said Morris Grant as the location thereof is fixed and determined by the order entered herein on the 6th day of December, 1905, it is therefore, and for that reason, adjudged, ordered and decreed that this suit be dismissed as to said *teacts*, described as follows:

75 acres of land on Beech Creek, described in letters patent issued by the Governor of West Virginia, to Michael Mount and A. Trent, bearing date the 10th day of June, 1868, and

187 acres of land on Beech Creek, described in that certain conveyance or instrument bearing date the 2nd day of June, 1881, executed by Ulysses Hinchman, Commissioner of School

page 628.] Lands, to Richard Canady.

And that the tracts of land described in said letters patent, and deed or instrument, be and the same are hereby dismissed from this suit.

DECREE DISMISSING AS TO LANDS OF ALEX. STAFFORD AND WIFE.

State of West Virginia,

page 629.] *vs.* (*In Chancery.*

Henry C. King, et'al.

This day came again the parties by their attorneys and the Court having duly considered the motion of Alexander Stafford and Lorentia Stafford to dismiss this cause under section six of chapter 105 of the Code, as amended by the Acts of 1905, heretofore made, as to the several tracts of land mentioned and described in those certain letters patent, and that certain conveyances or instrument, listed in and filed in the decree herein of the 5th day of June,

1905, and enrolled in Chancery Order Book No. 20, at page 130, and containing 20 acres, 170 ares, 70 acres, 37 acres, 141 acres, and 587 3-4 acres, is of opinion to sustain said motion.

It is therefore adjudged, ordered and decreed that this suit be dismissed as to each of said tracts of land and that said tracts and each of them be and are hereby dismissed out of this suit.

page 630.] DECREE DISMISSING AS TO LANDS OF ALEX WHITE *AN* OTHERS.

State of West Virginia
vs.) *In Chancery.*
Kenry C. King et al.

This cause came on to be heard this 7th day of December, 1905, upon the separate motion of Robert White, DeWitt White, Prescott White, Bennett S. White and Stella White, devisees of Mary A. White, deceased, to dismiss certain lands described in said motion.

And it appearing to the court from the evidence in this cause that the land described in said motion is a tract of 800 acres, lying in Logan County, West Virginia, on Dingess Run and Marsh Fork of same, branches of Guyandotte River, and lying wholly outside of the *boundarys* of the Robert Morris survey as now ascertained and fixed by the Court by decree entered at this term, the 6th day of December, 1905. It is therefore adjudged, ordered and decreed that said tract of 800 acres described as aforesaid, be and the same is hereby dismissed from this suit and this suit is dismissed as to said lands.

page 631.] DECREE DISMISSING AS TO LANDS OF HINCHMAN.

STATE OF WEST VIRGINIA,
vs.) *In Chancery.*
HENRY C. KING, ET AL,

This day this cause came on again to be further heard upon

the motion of Joseph W. and George Hinchman, and it appearing from the deposition of G. S. Stone that the folowing tracts of land mentioned and described in the letters patent and conveyances or instruments heretofore filed in this cause, are situated outside of and beyond the boundary lines of the Morris tract mentioned in the bill and proceedings, as such lines have been determines and fixed by decree of this Court at this term; and the Court doth therefore dismiss this suit as to the following tracts of land; seventy-eight (78) acres on Rich Creek granted to William Hinchman on August 1, 1870; thirty (30) acres on Rich Creek granted to William Hinchman the 1st day of November, 1859; twenty-five (25) acres on Rich Creek granted to William Hinchman on the 30th day of July, 1837; ten hundred and forty (1040) acres on Rich Creek described in what purports to be a patent bearing date August 1, 1862; two hundred and eighteen and one-fourth (218-1/4) acres on Rich Crek granted to George Hinchman March 10, 1886 by L. D. Chambers, Commissioner of School Lands; One hundred and eighty and one-half (180-1/2) acres on Guyandotte Creek granted to James H. Hinchman on March 10, 1886 by said L. D. Chambers, Commissioner; and three hundred and twenty-nine (329) acres on the Mountain between Rich and Madison Creeks, conveyed to George Hinchman on May 5, 1887, by William Stratton, Commissioner.

page 632.] DECREE DISMISSING AS TO LANDS OF RICHARD TORPIN ET ALS.

State of West Virginia
vs.) *In Chancery.*
Henry C. King, et al,

This day this cause came on to be further heard, upon the motion of Richard Torpin, George Wharton Pepper, and John Lambert, Trustees, to dismiss this suit as to certain lands mentioned and described in said motions and the patents and con-

veyances or instruments heretofore filed in this cause; and it appearing to the Court, from the deposition of James Dameron and of G. S. Stone, that said tracts of land are situated outside of and beyond the boundary lines of the Morris grant mentioned and described in the bill and proceedings in the said cause, as such boundary lines have been fixed and determined by the decree of this Court at this term, it is therefore adjudged, ordered and decreed that said suit be dismissed as to said tracts, viz: one tract of one hundred acres on Mate Creek patented to John Smith August 14, 1827; one tract of one hundred and fifty (150) acres on Mate Creek patented to Andrew Murphy on the 1st day of October, 1849; another tract of one hundred and fifty (150) acres on Mate Creek and Upper Camp Branch granted to Warren Alderson, on the 24th day of February, 1871; one tract of one hundred and seventy-one (171) acres on Mate Creek conveyed to Elias Hatfield by deed dated the 20th day of August, 1883; one tract of seven hundred and forty-nine (749) acres on Mate Creek granted to Elias Hatfield on the 15th day of November, 1884; one tract of four hundred and forty and two-thirds ($440\frac{2}{3}$) acres on Mate and Pigeon Creeks granted
page 633.] to J. D. Sargeant by deed dated the 5th day of October, 1888; and one tract of three hundred and twenty-two (322) acres on Mate Creek granted to Elias Hatfield by deed dated the 15th day of November, 1884.

page 634.] DECREE DISMISSING AS TO CERTAIN LANDS.

State of West Virginia
vs.) *In Chancery.*
Henry C. King et al

This day this cause came on again to be further heard and it appearing to the court from the evidence in the cause that the following tracts of land are situated outside of and beyond the boundaries of the Morris Grant as such boundaries have been

located, fixed and determined by a decree of this Court at this Term, namely, three hundred and twenty-nine (329) acres on Lawson Branch described in the deed from L. D. Chambers, Commissioner to William Stratton, dated the 24th of June 1886. Three Hundred (300) acres on Pond Mill Branch of Huff's Creek, described in the deed from L. D. Chambers, Commissioner to George MacDonald, dated the 1st of April 1887. Three hundred and thirty-six (336) acres on the Rock Camp Fork of Dingess' Run, described in a deed from L. D. Chambers, Commissioner, to Hugh Toney, dated the 2nd of February, 1889. Three hundred and sixty-eight (368) acres, on Dingess Run, described in a deed to William Stratton from L. D. Chambers, Commissioner, dated the 20th of October 1885. Seventy-five (75) acres on Browning Fork of Horse Pen Creek, described in a deed from L. D. Chambers, Commissioner to William Stratton, dated the 24th of October 1886. Ninety-nine (99) acres on Laurel Hollow, described in a deed from L. D. Chambers, Commissioner, to John E. Robertson, dated the 20th of December 1886. Thirty-three acres on Cazee Branch, described in a deed from L. D. Chambers, Commissioner to J. S. Miller, dated the 5th of April 1883. One Hundred and Ten (110) acres on Cazee Branch, described in a deed from U. B. Buskirk, Commissioner to Virginia Lawson, dated the 1st of June, 1892. Copies of all which deeds are filed in this cause, to which

page 635.] reference is had.

It is therefore adjudged, ordered and decreed that each of said tracts be dismissed from this suit, and that this suit be dismissed as to said tracts.

page 636.] DECREE DISMISSING AS TO LANDS OF W. A. JOHNSON.

State of West Virginia
vs.) *In Chancery.*
Henry C. King et als.

This day this cause came on to be further heard, and the de-

fendant W. A. Johnson moved the court to dismiss from this suit the land described in a certain order entered herein on his motion, on the 12th day of July, 1905, under and by virtue of section 6, of chapter 105 of the Code as amended by chapter 42, of the Acts of the Legislature at its session of 1905, and further because the said tracts of land mentioned and set forth in said orders are situated outside of the tract sought to be sold in this suit for the benefit of the school fund, as in this proceeding referred to as the Morris grant, from the Commonwealth of Virginia, bearing date June 23, 1795.

Upon consideration whereof, and it appearing to the Court, that said tracts of land are located outside of the said Morris tract as the location thereof is fixed and determined by the order entered herein on the 6th day of December, 1905, it is therefore and for that reason adjudged, ordered and decreed that this suit be dismissed as to said tracts described as follows:

84 acres of land on Twisted Gum Camp Fork of Gilbert Creek, described in letters patent issued by the Governor of the Commonwealth of Virginia to Thomas Cline, bearing date on the 1st day of December, 1856.

37 acres on Twisted gum gap, fork of Gilbert's Creek, described in letters patent issued by the Commonwealth of Virginia to Thomas Cline, assignee to Gabriel Riffe, bearing date on the 30th day of September, 1856.

page 637.] 700 acres of land on the lower side of Gilbert Creek, described in letters patent issued by the Governor of the State of West Virginia to John Allen and Evermont Ward bearing date on the 28th day of June, 1873.

And that the tracts of land described in said letters patent and deeds or instruments be and they are hereby dismissed from this suit.

DECREE DISMISSING AS TOLER LANDS.

State of West Virginia
vs.) *In Chancery.*
Henry C. King et als.

This day this cause came on again to be further heard, and the defendant A. H. Toler, J. C. B. Toler, Julius C. Toler, J. M. P. Toler, and Nettie Toler moved the court to dismiss from this suit the lands described in a certain order entered herein on their motion on the 12th day of July, 1905, under and by virtue of section 6, of chapter 105 of the Code, as amended by chapter 42, of the Acts of the Legislature at its session of 1905, and further, because the said tracts of land mentioned and set forth in said orders are situated outside of the tract sought to be sold in this proceeding for the benefit of the school fund, as in this proceeding referred to as the Morris Grant, from the Commonwealth of Virginia, bearing date June 23, 1795.

Upon consideration whereof, and it appearing to the court that said tracts of land are located outside of said Morris tract and the location thereof as fixed and determined by the order entered herein on the 6th day of December, 1905; it is therefore and for that reason adjudged, ordered and decreed that this suit be dismissed as to said tracts described as follows:

page 638.] 50 acres of land on Ben Creek described in letters patent issued by the Governor of West Virginia, to Andrew Toler, bearing date the 5th day of August, 1868.

50 acres of land on Ben Creek, described in letters patent issued by the Governor of West Virginia to Andrew Toler, bearing date the 5th day of August, 1868.

420 acres, of land on the left hand fork oof Ben Creek, described in letters patent issued by the Governor of the Commonwealth of Virginia to William Mullins bearing date the 1st day of June, 1860.

78 acres of land on the hickory gap fork of Ben Creek, and Allum Creek, described in letters patent issued by the Gover-

nor of the Commonwealth of Virginia to Wm. Collins, bearing date the 2nd day of August, 1852.

38½ acres of land on hickory gap branch of Ben Creek described in a conveyance or instrument bearing date the 21st day of December, 1866, executed by L. D. Chambers, Commissioner of School Lands to Andrew M. Toler.

209¾ acres of land on Ben Creek, described in a conveyance or instrument bearing date the 24th day of August, 1888, executed by L. D. Chambers, commissioner of School Lands to Andrew M. Toler.

173 acres of land on Ben Creek, described in a conveyance or instrument bearing date on the 24th day of August, 1888, executed by L. D. Chambers, Commissioner of School Lands to Andrew M. Toler.

And that the tracts of land described in said letters patent and deeds or instruments be and they are hereby dismissed from this suit.

page 639.] DECREE DISMISSING AS TO LANDS OF JAMES HATFIELD.

State of West Virginia

vs.) *In Chancery.*

Henry C. King et als.

This day this cause came on to be further heard and the defendant James Hatfield moved the court to dismiss from this suit the land described in a certain order entered herein on his motion on the 12th day of July, 1905, under and by virtue of section 6 of chapter 105 of the Code, as amended by chapter 42 of the Acts of the Legislature at its session of 1905, and further because the said tracts of land mentioned and set forth in said order are situated outside of the tract sought to be sold in this suit for the benefit of the School fund and in this proceeding referred to as the Morris grant from the Commonwealth of Virginia, bearing date June 23, 1795.

Upon consideration whereof, and it appearing to the court, that said tracts of land are located outside of the said Morris

tract and the location thereof as fixed and determined by the order entered herein on the 6th day of December, 1905, it is therefore adjudged, ordered and decreed that this suit be dismissed as to said tracts described as follows:—

151 acres of land on Bem Creek described in a conveyance or instrument bearing date on the 4th day of October, 1883, executed by L. D. Chambers, Commissioner of School lands, to Mitchell Hatfield.

30 acres of land on the old house branch of Ben Creek, described in letters patent issued by the Governor of the Commonwealth of Virginia to Aly Hatfield Jr., bearing date the 1st day of November, 1856.

page 640.] 390 acres of land on the north-west side of the right hand fork of Ben Creek, described in letters patent issued by the Governor of the Commonwealth of Virginia to Aly Hatfield, Joseph Hatfield and Aly Hatfield, Jr., bearing date the 5th day of July, 1861.

150 acres of land lying on Ben Creek, described by letters patent issued by the Governor of the Commonwealth of Virginia to Aly Hatfield Jr., bearing date on the 1st day of November, 1856.

470 acres of land on Ben Creek described in a conveyance or instrument bearing date on the 12 day of March, 1889, executed by L. D. Chambers, Commissioner of School Lands, to James Hatfield.

And the tracts of land described in said letters patent and deeds or instruments be and they are hereby dismissed from this suit.

page 641.] DECREE DISMISSING AS TO McDONALD LANDS.

STATE OF WEST VIRGINIA)
vs) *In Chancery.*
HENRY C. KING, ET AL,)

This day this cause came on again to be further heard, and it

appearing to the Court from the deposition of Alfred Buskirk, taken and filed in this cause, that each and every of the several tracts and parcels of land mentioned and described in the joint and separate answer of Millard McDonald, Bruce McDonald, Bilton McDonald, Anne Brook Turley, Alice Robinson, and Mary A. Perry, children and heirs-at law of W. W. McDonald, deceased, which tracts of land are fully described in the several grants and deeds exhibited and filed with said answer in this cause, save and except the tracts of 100 acres, 175 acres, 225 acres, 310 acres and 267 acres located on Big Spring Branch of the Huff's Creek, and 75 acres and 160 acres on Huff's Creek, are located outside of and beyond the lines of the Morris grant mentioned and described in the bill and proceedings in this cause, as the bounds and abuttals of said Morris grant have been fixed and determined by the decree entered in this cause at this term.

It is therefore adjudged, ordered and decreed that this suit and proceeding be dismissed as to said tracts so outside the boundaries of said Morris grant as so fixed by said decree.

And it further appearing to the Court from said depositions that each and every tract and parcel of land mentioned and described in the separate answer of Millard, Bruce and Bilton McDonald, heretofore filed in this cause, and particularly described in the deed and patents filed with said answer, except one tract of four hundred (400) acres on the Lick Fork of Leatherwood Creek, one tract of seventy-two (72) acres on the Right Fork of Buffalo Creek, one tract of one hundred and forty (140) acres of minerals on Gilbert's Creek, one tract of twenty-nine (29) acres of mineral on Gilbert's Creek, and about one-third (1/3) of a one hundred and twenty-two (122) acre tract on Bull Branch of Buffalo Creek, are also situate without and beyond the boundaries of the said Morris grant as fixed and determined by the decree aforesaid; it is therefore adjudged, ordered and decreed that said tracts, and each of them, be dismissed from this suit, and that this suit be dismissed as to said tracts, save and excepting as to that portion of the one hundred and twenty-two (122) acre tract so situate, partly within

[page 642.]

and partly without; and the motions of the above named parties, heretofore made to dismiss from this suit all of said tracts mentioned and described in said two answers, and the several exhibits therewith filed, is hereby sustained so far as said motions relate to the tracts of land above excepted, viz.: the tracts of one hundred (100), one hundred and seventy-four (174), two hundred and twenty-five (225), three hundred and ten (310), and two hundred and sixty-seven (267) acres, located on Big Spring Branch of Huff's Creek, and the seventy-five (75) and one hundred and sixty (160) acre tracts on Huff's Creek, and the four hundred (400) acres on the Lick Fork of Leatherwood Creek, seventy-two (72) acres on the Right Fork of Buffalo Creek, one hundred and forty (140) acres of mineral, and twenty-nine (29) acres in fee on Gilbert's Creek, and that portion of

page 643.] the one hundred and twenty-two (122) acre tract on Bull Branch of Buffalo Creek, are hereby dismissed from this suit, and this suit is hereby dismissed as to each and every of said tracts.

page 644.] DECREE DISMISSING AS TO CERTAIN LANDS OF TURKEY CREEK LAND COMPANY.

State of West Virginia	)	
vs	)	*In Chancery.*
Henry C. King, et al.	)	

This day came the State of West Virginia by E. M. Showalter, her attorney, and the defendant Henry C. King by M. F. Stiles, his attorney, and the defendant Turkey Creek Land Company by Rucker, Anderson & Hughes, C. W. Campbell, and John A. Sheppard, its attorneys, and thereupon, the Turkey Creek Land Company moved the court to dismiss this suit under Section 6 of Chapter 105 Code, as amended by Chapter 42 of the Acts of the Legislature of the State of West Virginia, Session 1905, as to all those several tracts or parcels of land, mentioned and described in all those certain twenty-seven letters patent issued by the Governor of the Commonwealth of Virginia, and in all those certain seven letters patent issued by the Governor of the State of West Vir-

ginia, and in all those certain eight conveyances or instruments made by L. D. Chambers, Commissioner of School Lands for Logan County, West Virginia, certified copies of which said patents and conveyances, or instruments, were filed in this cause in open court on the 27th day of July 1905, and listed in a decree entered in this cause on said day and date which said patents and conveyances, or instruments, are as follows:

(1). Patent issued by the Governor of Virginia, bearing date on the 20th day of September, 1830, to *Isam* Blankenship for thirty-four (34) acres of land, situate on Tug River.

(2). Patent issued by the Governor of Virginia bearing date on the 1st day of August 1836 to Eli Bailey for ten (10) acres of land, situate on Sandy River.

page 645.] (3). Patent issued by the Governor of Virginia, bearing date on the 30th day of September, 1848, to Harvey Bailey for fifty-eight (58) acres, situate on Sandy River.

(4). Patent issued by the Governor of Virginia, bearing date on the 1st day of July 1854, to Eli Bailey for thirty-eight (38) acres of land, situate on Turkey Creek of Sandy River.

(5). Patent issued by the Governor of Virginia bearing date on the 1st day of October, 1850, to William Collins for twenty-four (24) acres of land, situate on Spring Fork of Ben Creek.

(6). Patent issued by the Governor of Virginia, bearing date the 1st day of November 1855 to Christian Cline for one hundred and fifty (150) acres, situate on Four Pole Creek of Sandy River.

(7). Patent issued by the Governor of Virginia bearing date on the 1st day of October 1850, to Aly Hatfield for seventy-five (75) acres, situate on the right hand fork of Ben Creek of Sandy River.

(8). Patent issued by the Governor of Virginia bearing date on the 30th day of August 1842 to Aly Hatfield for sixty-six (66) acres, situate on Ben Creek.

(9). Patent issued by the Governor of Virginia bearing date on the 1st day of March, 1860, to John Dempsey Jr. for eleven hundred and ninety-one (1191) acres, situate on Turkey Creek of Sandy River.

(10). Patent issued by the Governor of Virginia bearing date on the 2nd day of August 1852 to Andrew Hatfield for fifty (50) acres, situate on the Twisted Gun Branch of the right hand fork of Ben Creek.

(11). Patent issued by the Governor of Virginia, bearing date on the 2nd day of August 1858, to W. N. Alderson,
page 646.] for one hundred and twenty-five (125) acres, situated on Twisted Gun Branch of Gilbert's Creek.

(12). Patent issued by the Governor of Virginia bearing date on the 31st day of December 1844, to Joseph Hatfield Jr. for thirty (30) acres, situate on Ben Creek.

(13). Patent issued by the Governor of Virginia bearing date on the 1st day of May, 1855, to John Dempsey Jr., for forty-two (42) acres, situated on the Lick Branch of Sandy River.

(14). Patent issued by the Governor of Virginia bearing date on the 1st day of November 1856, to Aly Hatfield, for thirty (30) acres, situated on the Old House Branch of Ben Creek.

(15). Patent issued by the Governor of Virginia, bearing date on the 30th day of June, 1845, to Andrew Hatfield for twenty-one acres, situate on the right hand fork of Ben Creek.

(16). Patent issued by the Governor of Virginia, bearing date on the 1st day of November 1856, to Aly Hatfield, for one hundred and fifty (150) acres, situate on Ben Creek.

(17). Patent issued by the Governor of Virginia, bearing date on the 30th day of June 1845 to Peter Cline for thirty-two (32) acres, situate on Gilbert's Creek of Guyandotte River.

(18). Patent issued by the Governor of Virginia, bearing date on the 2nd day of August 1852, to Joseph Hatfield, for fifty-four (54) acres, situate on the Spring Fork of the right hand fork of Ben Creek.

(19). Patent issued by the Governor of Virginia, bearing date on the 2nd day of August 1852 to Jacob Cline for twenty-five (25) acres, situate on Gilbert's Creek of Guyandotte River.
page 647.] (20). Patent issued by the Governor of Virginia, bearing date on the 2nd day of August, 1858, to

Humphrey Trent for seventy (70) acres, situated on the Mud Lick Fork of Gilbert Creek of Guyandotte River.

(21). Patent issued by the Governor of Virginia bearing date on the 3rd day of July 1860, to Humphrey Trent for ninety (90) acres, situate on Gilbert's Creek of Guyandotte River.

(22). Patent issued by the Governor of Virginia, bearing date on the 1st day of December 1857 to Humphrey Trent for fifty-seven (57) acres, situate on Gilbert's Creek of Guyandotte River.

(23). Patent issued by the Governor of Virginia bearing date on the 29th day of November, 1845, to Frederick Trent for forty-eight (48) acres, situate on Gilbert's Creek of Guyandotte River.

(24). Patent issued by the Governor of Virginia, bearing date on the 1st day of August 1836 to Edward Mason, for twenty-eight (28) acres, situate on Gilbert's Creek.

(25). Patent issued bythe Governor of Virginia, bearing date on the 1st day of November, 1859, to Frederick Trent for two hundred and twenty-five (225) acres, situate on Gilbert's Creek of Guyandotte River.

(26). Patent issued by the Governor of Virginia bearing date on the 31st day of October, 1848, to Thomas Mullins and Harvey Bailey for one hundred (100) acres, situate on Tug River.

(27). Patent issued by the Governor of Virginia, bearing date on the 1st day of November 1859, to Warren M. Alderson for thirteen hundred (1300) acres, situate on Spring Fork of the right hand fork of Ben Creek.

(28). Patent issued by the Governor of Virginia
page 648.] bearing date on the 31st day of January 1871, to David Cline for one hundred (100) acres, situate in Logan County.

(29). Patent issued by the Governor of West Virginia bearing date the 21st day of March 1868, to Johnson Trent for thirty-nine (39) acres situate on the Old House Branch of Gilbert's Creek.

(30). Patent issued by the Governor of West Virginia, bearing date the 13th day of April 1868 to David Cline for seventy-five (75) acres, situate on Big Lick Fork of Gilbert's Creek.

(31). Patent issued by the Governor of West Virginia bearing date the 22nd day of July 1867 to Jacob Cline for seventy-five (75) acres, situate on Gilbert's Creek.

(32). Patent issued by the Governor of West Virginia, bearing date the 13th day of April, 1868, to David Cline, for thirty-three (33) acres, situate on Gilbert's Creek of Guyandotte River.

(33). Patent issued by the Governor of West Virginia bearing date the 22nd day of July 1867, to Jacob Cline for one hundred and twelve (112) acres, situate on the East side of Gilbert's Creek.

(34). Patent issued by the Governor of West Virginia, bearing date the 13th day of April 1868 to Simeon Justice for fifteen hundred (1500) acres, situate on Four Pole Creek of Tug River.

(35). A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands of Logan County, bearing date on the 12th day of March 1889, conveying to Alexander Trent a certain tract or parcel of land, situate, lying and being in Logan County on Gilbert's Creek, described by metes and bounds, containing two hundred and eighty (280) page 649.] acres.

(36). A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands for Logan County, bearing date July 26th 1886, conveying to Alexander Trent a certain tract or parcel of land, situate, lying and being in Logan County on Gilbert Creek, and described by metes and bounds as containing two hundred and five (205) acres.

(37). A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands for Logan County, bearing date on October 20th 1885, conveying to Moses Mounts two certain tracts or parcels of land, situate in Logan County, the one containing one hundred and twelve (112) acres, lying on Gilbert's Creek, the other containing one Hundred and four (104) acres, situate on Ben Creek and Gilbert's Creek.

(38). A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands for Logan County, bearing date on the 13th day of April 1886, conveying to *Cloyd* Bailey a

certain tract or parcel of land, situate in the County of Logan on Four Pole Creek and Sandy River, and described by metes and bounds as containing one hundred and thirteen (113) acres.

(39). A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands for Logan County, bearing date the 4th day of May 1888, conveying to Crockett Ellison a certain tract or parcel of land, situate in Logan County on Ben Creek, and described by metes and bounds as containing one hundrede and eighty-seven (187) acres.

(40). A conveyance or instrument executed by J. B. Ellison, Special Commissioner, bearing date November 28th, 1892, conveying to Lee Joyce a certain tract or parcel of land, situate in Logan County on Gilbert's Creek and described by metes and bounds as containing one hundred and forty-eight

page 650.] acres.

(41). A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands for Logan County, bearing date on the 15th day of January 1889, conveying to Moses Mounts a certain tract or parcel of land, situate in Logan County, described by metes and bounds as containing one hundred and nineteen and one-half 119 1/2) acres.

(42). A conveyance or instrument executed by L. D. Chambers, Commissioner of School Lands for Logan County, dated the 10th day of November 1884, conveying to Enoch Gibson, a certain tract or parcel of land, situate in Logan County on Big Fork Ridge of Ben Creek, and described by metes and bounds as containing three hundred and seventy-two (372) acres

And said motion coming on to be heard, and having been argued by counsel aforesaid, and the court being fully advised in the premises, upon consideration, is of opinion to and doth hereby sustain said motion to dismiss as to all the said tracts or parcels of land, except tracts numbered 2, 4, and 9 respectively, the said motion as to the said three tracts not being passed upon at this time, but is continued for further consideration.

It is therefore adjudged, ordered and decreed that this suit and the original and the several amended bills therein be, and

the same are hereby dismissed as to each and all of the tracts of land mentioned and described in the said letters patent issued by the Governors of the Commonwealth of Virginia and the State of West Virginia, and in the said conveyances or instruments, made by the Commissioner of School Lands for Logan County; and that the said several tracts or parcels of land be, and the same are hereby dismissed from this suit, except the three tracts above excepted. And the descriptions of the said tracts of land contained in the said several patents and conveyances are here referred to and made a part hereof as fully as if they had

page 651.] been copied herein in full.

page 652.] DECREE DISMISSING AS TO LANDS OF ALEXANDER VARNEY.

And at another day of said Circuit Court, to-wit, on the 8th day of December, 1905, the following decrees were entered:

State of West Virginia,
vs.) *In Chancery.*
Henry C. King, et al.

This day came the defendant Alexander Varney and moved the court to dismiss this suit as to those certain tracts of land, and to dismiss from this suit the lands mentioned and described in that certain order entered herein on motion of said defendant on the 12th day of July, 1905, under and by virtue of section six, of chapter 105 of the Code of West Virginia, as amended by Chapter 42 of the Acts of the Legislature of West Virginia, passed in 1905 and further upon the ground that the tracts of land mentioned and described in the said order, and the grant *conveyance* therewith filed are wholly outside of the tract sought to be sold herein for the benefit of the school fund called 500,000 acres described in these proceedings as the grant from the commonwealth of Virginia to Robert Morris bearing date June 23rd, 1785. And said motion having been argued by counsel and maturely considered, and it ap-

pearing from the evidence in this cause that the tracts of land described as aforesaid are wholly outside of the said Morris grant, it is for that reason adjudged, ordered and decreed that the said tracts of land, and each of them, be and are hereby dismissed from this suit and this suit is likewise dismissed as to said tracts of land.

page 653.] DECREE DISMISSING AS TO LANDS OF CHARLES L. TRACY.

State of West Virginia,

v.

Henry C. King et als.

This day this cause came on again to be further heard, and it appearing to the court that the lands mentioned and described in the answer herein from Charles L. Tracy, namely,

A tract of 120 acres of Laurel Branch of Guyandotte, and Barney of Island Creek, and

480 acres on Guyandotte and Island, being a part of 540 acres, a Virginia grant to Anthony Lawson, and

A tract of 80- 1-10 acres and the other of 21 3-4 acres situate on Island Creek, and also the boundary of 2664-½ acres on Rich Creek of Guyandotte River, conveyed by Alexander McClintock and wife to Henry Stann, trustee, by deed of record in the Clerk's office of the County Court of Logan County, are outside the boundaries of the Morris Grant as fixed and determined by this court in a decree at this term, therefore, it is adjudged, ordered and decreed that this suit be dismissed as to each and all of the above mentioned and described tracts of land.

DECREE DISMISSING AS TO LANDS OF ALEXANDER TRENT.

State of West Virginia

vs.) *In Chancery.*

Henry C. King et al.

This day came the defendant Alexander Trent and moved the

court to dismiss from this suit the tracts of land mentioned in that certain deed of conveyance mentioned and referred to in the order entered on motion of this defendant on the 12th day

page 654.] of July, 1905, and likewise to dismiss this suit as to said tract, under and by virtue of section six of chapter 105 of the Code of this State as amended by Chapter 42 of the Acts of the Legislature of West Virginia passed in the year 1905, which motion was argued by counsel and after mature consideration the court is of opinion to, and doth sustain said motion.

It is therefore adjudged, ordered and decreed that the tract of land mentioned and described in the deed of conveyance filed with the order hereinbefore mentioned be, and *os* hereby dismissed from this suit, and that this suit be dismissed as to said tract of land.

DECREE DISMISSING AS TO LANDS OF ELIJAH FERRELL.

State of West Virginia
vs.) *In Chancery.*
Henry C. King et al.

This day came the defendant Elijah Ferrell and moved the court to dismiss this suit as to that certain *tracts* of land, and to dismiss from this suit the lands mentioned and described in that certain order entered herein on motion of said defendant on the 12th day of July, 1905, under and by virtue of section six, of chapter 105 of the Code of West Virginia, as amended by chapter 42 of the Acts of the Legislature of West Virginia, passed in the said order, and the grant and conveyance therewith filed are wholly outside of the tract sought to be sold herein for the benefit of the School Fund called 500,000 acres described in these proceedings as the grant from the Commonwealth of Virginia to Robert Morris bearing date June 23rd, 1795. And said motion having been

page 655.] argued by counsel and maturely considered, and it appearing from the evidence in this cause that the tract of land described as aforesaid is wholly outside of the said

Morris Grant, it is for that reason adjudged, ordered and decreed that the said tract of land, be and is hereby dismissed from this suit, and this suit is likewise dismissed as to said tract of land.

page 656.] DECREE DISMISSING AS TO LANDS OF CHRISTIANS.

At a circuit court held in and for the county of Marion, at the court-house thereof, on the 6th day of March, 1907, the following decree was entered:

State of West Virginia,
vs.) *In Chancery.*
Henry C. King et al.

This day came again the plaintiff by her attorney, Henry C. King, by Maynard F. Stiles, his attorney, and J. J. Christian, B. P. Christian, Albert L. Christian, George T. Christian, Mrs. Cora I. Altizer, formerly Christian, and *and* Mrs. William Altizer, formerly Christian, and Mrs. Sarilda Ferrell, formerly Christian, and Spicey E. Stanley, formerly Christian, children and heirs at law of Paren Christian, deceased, by W. R. Lilly, and C. W. Campbell, their attorneys, and thereupon, the motion made by said heirs on the 13th day of July, 1905, to dismiss from and out of this suit certain tracts of land hereinafter mentioned and described, coming on to be heard, and it appearing that said motion should be sustained, it is therefore adjudged, ordered and decreed by the court that the following named patents and conveyances or instruments situated in Logan county be and they are hereby dismissed from this suit, and this suit and the petition of Henry C. King to redeem the same are also dismissed as to said tracts, viz.:

25 acres, situate on the Guyandotte River, below Elk Creek, granted to J. P. Christian by letters patent bearing date the 2nd day of August, 1858;

194 acres, situate on the lower side of Elk Creek and the Guyan-

dotte River, granted to Isaiah Elkins, by patent bearing date the 1st day of August, 1860;

184½ acres, on the Dingess Fork of Elk Creek, granted to Paren Christian by *Ulysses* Hinchman, Commissioner of School Lands, by deed, bearing date the 2nd day of June, 1881;

129 acres, situate on Moore's Fork of Elk, granted by the said Commissioner to said Christian, by deed, dated the
page 657.] 11th day of June, 1881;

76 acres, situate on Moore's Fork of Elk Creek, granted as aforesaid by deed, bearing date the 23rd day of June, 1881;

201½ acres, situate on Elk's Creek, granted as aforesaid, by deed, dated the 20th of June, 1881;

179 acres, situate on the Turkey Pen Fork of Elk Creek, as aforesaid, by deed, dated the 20th day of June, 1881;

134 acres on Moore's Fork of Elk Creek Branch as aforesaid, by deed, dated the 22nd of June, 1881;

360 acres, situate on the waters of Elk Creek, beginning in the head of Grape Hollow, and granted as aforesaid, by deed, by deed, dated the 22nd of June, 1881;

199 acres, situate on the Elk Creek and Bear Branch, granted as aforesaid, by deed, dated the 23rd day of June, 1881; and 303 acres, situate on Elk Creek, granted by U. S. Buskirk, Commissioner of School Lands, to Paren Christian, by deed, bearing date November 2nd, 1890, and which was sold to Paren Christian, by deed, bearing date November 2nd, 1890, and which was sold to Paren Christian by Ulysses Hinchman, Commissioner of School Lands of Logan County, on the 10th day of August, 1875.

The certified copies of said patents and deeds are on file in this cause, and are specified in the decree entered herein on the 13th day of July, 1905, Chancery Order Book No. 20, pages 209, 210.

page 658.] State of West Virginia.

Marion County, to-wit:

I, R. B. Parrish, Clerk of the Circuit Court of West Virginia,

for the County of Marion, do certify that the foregoing transcript, together with certain maps not copied therein but separately certified, and two volumes of depositions, is a true transcript of so much of the record of the proceedings in said court and in the Circuit Court for Cabell County in the Chancery cause entitled State of West Virginia vs. Henry C. King et als. subsequent to the remanding of said cause by the Supreme Court of Appeals upon a former appeal therein, as I am advised by the Counsel for defendant King is material to be considered, (in connection with the record of said cause already in said Supreme Court of Appeals) upon appeal from the decree and orders contained therein, except certain documents offered in evidence before Commissioner, John T. Graham, which I am unable to find in the file of said cause.

Given under my hand this the 7th day of November, 1907.

R. B. Parrish,
Clerk.

Cost of Transcript, $625.00. Paid by Def't King.

R. B. Parrish,
Clerk.

page 659.] At another day of said Circuit Court, to-wit, on the 6th day of of March, 1907, the following decree was entered:

State of West Virgina,
vs.) *In Chancery.*
Henry C. King et al.

This day came the plaintiff by her attorney, and the defendant Henry C. King by Maynard F. Stiles, his attorney, and Milton G. Browning, W. A. Browning, Joseph Browning, Sarilda Mitchell, Vanilla Altizer, Thursa A. Justice, and Elmira Godfrey, Earl D. Browning, Kenna Browning and ——Browning, and Penelope Toler, heirs at law of Wm. C. Browning, decd., and thereupon, a motion made by the last named defendants, as shown by decree entered herein on the 13th day of July, 1905, in Chancery Order

Book No. 20, at page 221, came on to be heard.

And it appearing to the Court that the said motion should be sustained, it is therefore, adjudged, ordered and decreed that the tracts of land mentioned and described in the deeds, copies of which were filed by said decree of the 30th of July, 1905, viz.:

One tract of 112 acres of land, situate on Laurel Branch, described in a deed of June 1, 1881;

148 acres on the left of Spice Creek, described in a deed of June 1, 1881;

47 acres and 68 acres, situate on Deep Ford Branch, and described in a deed dated June 1, 1881;

527 acres, situate on Spice Creek, described in a deed dated the first day of June, 1881, and another tract of 68 acres, situate on Deep Ford Branch, described in a deed, dated May 13, 1887;

640 acres, situate on Spice Creek, described in a deed from L. D. Chambers, Commissioner of School Lands, to W. C. Browning, all the other deeds having been made by Ulysses Hinchman, Commissioner of School Lands, to the said Browning, be and the said tracts and each of them are hereby dismissed from and out of this suit, and this suit and the petition of Henry C. King to redeem said lands are also dismissed as to said tract of land.

DEPOSITIONS

Of the Defendant, King, Taken before John T. Graham, Commisioner.

TRANSCRIPT

JAMES M. GIBBONEY, a witness introduced in be-
page 1.] half of the *defendant* Henry C. King, after being duly sworn upon oath testified as follows:

Examined by Mr. Stiles.

Q. State your age, residence and occupation?

A. I am in my fifty-fifth year. Residence Wytheville, Virginia, and occupation, Surveyor of Wythe County, Virginia.

Q. How long have you been county surveyor of Wythe County?

A. On the 9th day of next month I will have been County Surveyor of Wythe County Thirty-two consecutive years.

Q. How long had you been a land surveyor before your election as county surveyor?

A. About three years.

Q. From whom did you learn art or science of land surveying?

A. Mostly from my father who was a very finely educated man and Captain William B. Foster, who is now County Clerk at Wytheville and who was County Surveyor of the county from 1846 to 1864.

Q. During your term of office and your experience as a surveyor of Wythe County, have you became familiar or acquaint-

ed with the customs and practice of the County Surveyors of Wythe County, as regard to making and returning or reporting surveys, made from that office?

A. Very much indeed sir. I mean very well indeed.

Q. What is and has been custom of the County Surveyors of Wythe County as to dating the completion of surveys upon the certificate of survey, as to whether that relates to the time of writing up and signing the plat and field notes or otherwise?

Question objected to by Contesting defendants, as improper and inadmissable.

It is here agreed between the parties that the mere formal objection to a question and answer shall be deemed as sufficient to raise before the Court all just and legal ob-

page 2.] jection that may be urged.

A. I can only speak as to surveys by Captain Foster first and all other surveyors subsequent including myself. That is the date as shown on the book at the foot of the certificate was the date it was recorded in the office.

Q. I understand then from your answer that the words "Completed" at a day stated *appearing* upon a certificate of survey, indicates the time when the certificate was filed and recorded, is that correct?

A. Yes sir.

Contesting defendants here move to strike out the last two questions and answers.

Q. Have you had occasion to retrace, or resurvey many of the surveys made by the County Surveyors, of Wythe County and their deputies, in the latter part of the 18th century and the early part of the 19th century.

A. Yes sir, very many.

Q. In such experience what have you found was the practice of such surveyor with reference to marking or not marking trees as side line trees, of such surveys?

A. I never saw a survey in Wythe County with side lines except after Captain Foster—Captain Foster was the first man

that marked said lines. The old surveyors always marked fore and aft trees, if they marked any.

Q. Did the retracing or surveying of old surveys, that you have done, include any made or reported by James Taylor, Deputy Surveyor, under Robert Adams?

A. I think not.

Q. Have you examined a chestnut block in the custody of the Clerk of the Circuit Court of the United States, for the Western District of Virginia at Abingdon, Virginia.

A. Yes sir.

Q. When and by whom and under what circum-
page 3.] stances was that block exhibited to you?

A. I examined it on July 1st, 1902, the day before yesterday, it was exhibited to me by the Deputy Clerk—Mr. Lindsey and a Janitor of the United States Court building. When I got there I asked for one block from the Muzzle Corner of this big survey and Mr. Lindsey not being able to find the janitor immediately took me himself to the attic and placed the block in my hands, some little time thereafter the janitor came in and remained until I got through.

Q. Do you know whether or not, that was the block filed in the King suits, in that court?

A. The Clerk so informed me when he placed it in my hands, and that is what I called for.

Q. Describe the appearance of that block as to size and shape and whether it was entire or in two or more pieces?

A. It is a chestnut in two pieces—the one piece had three well defined *markes* on it, made I think by a large hatchet or small ax and well defined and appeared very plain on them.

Q. Were these hacks in the wood or in the bark?

A. In the wood—there was no bark on it.

Q. To what depth did the ax appear to penetrate the wood?

A. I think it was a very *deed* cut through the bark and all at first. It appeared so to me.

Q. Describe the position of the hacks with reference to each

other and what their situation would indicate as to the *hight* at which the tree was originally marked?

A. Well sir I think the lowest mark was about five feet from the ground and the upper mark fifteen inches above that—I measured it and the middle mark some where between those points. I think they were evidently marked by a left handed man from the position of the marks. The lower mark was more horizontal than the other two, and the second one was more vertical than the first and the upper still more vertical—I think that at the time it was marked was fully up to the top of the head of the man making it or higher.

page 4.] Q. On which of the two pieces of this block did these hacks you have spoken of appear—the piece towards the heart of the tree or the outer portion?

A. These marks were on the piece near the heart of the tree—the smaller piece of the two.

Q. Did you notice about the thickness of the other portion of the block which had grown over the hacks after they were first made if so about what was that thickness?

A. I did not.

Q. Did you notice the scars on the inner side of the last mentioned piece whether that piece fitted over or lay in contact with the hacks on the other portion of the block.

A. I did sir. I noticed some scars but how they were made I cant tell anything about that.

The contesting defendants move to strike out all of the evidence of the witness relating to the chestnut block and the marks thereon as well as the s atement made by Clerk Lindsey, because such evidence is secon dary—block itself being the best evidence.

CROSS EXAMINED.

By Mr. Campbell.

Q. How long was the chesti ut block you have been speaking about?

A. It would average about twenty-four inches. I measured it.

And further this deponent saith not.

JAMES M. GIBBONEY.

Witness claims 3 days and 278 miles.

B. U. MORGAN a witness *intreduced* in behalf of
page 5.] the defendant King after being first duly sworn upon oath testified as follows:

Examined by Judge Stiles.

Q. State your age residence and occupation?

A. Age 48 years, Woosley, Wyoming County, West Virginia, is my residence and I am by occupation a carpenter and farmer.

Q. In what part of Wyoming County do you live?

A. In the Southern portion of the county.

Q. How long have you lived in that county?

A. I have lived there forty-eight years—I will be forty-nine years old the 22nd day of next February.

Q. Have you been acquainted during your life time with the people of Wyoming and Logan counties?

A. Some of them—yes sir.

Q. Have you in years past known many of the older residents of those counties?

A. Yes sir some of them—not all of them of course.

Q. Are you acquainted with the country along Guyandotte River from Wyoming County down to the neighborhood of Logan Court House?

A. Yes sir I have been along there—only one time.

Q. Do you know where the creek called Island Creek comes into Guyandotte River, and the creek called Gilbert Creek?

A. Yes sir.

Q. You may state whether at any time prior to the commencement of this suit or of the other suits by Henry C. King and *commonlly* spoken of as the King cases you heard among the people of Logan or Wyoming Counties any tradition or reputation or talk of that character that Island Creek or Gilbert Creek or other creeks in that neighborhood—along Guyandotte

Contesting defendants move to strike out the answer of the witness.

Q. How far from Gilbert Creek did this conver-
page 8.] sation at your father's house occur?

A. Well sir I couldn't tell you exactly but it is between twenty-five and thirty miles. I walk it in about a day.

Q. Do you recall hearing your parents or any one else other than Hatfield and Cline, speak of the same matter?

Objected to by contesting defendants.

A. Well as a matter of course I heard it talked a great deal among the people and by my parents *to* about what had been said by these two old people.

Q. Was the country down through the valley of Guyandotte River in that neighborhood thickly settled or was the population scattered?

A. The population scattered.

The contesting defendants move to strike out the testimony of this witness which relates to the conversations he pretends to have heard from Andrew Hatfield and Henry Cline; and also the statement that he and others talked about what they had said. And also moved to strike out the whole of the testimony of the witness.

CROSS EXAMINED.

By Mr. Shepard.

Q. How far did your father live from Island Creek?—at the time of the conversation you have detailed?

A. Well sir about twenty-five or thirty miles. No—I was thinking about Gilbert Creek; It was about forty miles from where my father lived to the mouth of Island Creek.

Q. Were you acquainted with the people who lived in the neighborhood of Island Creek at that time? And on the Creek?

A. No sir. I was only acquainted with the people who had been there—that is they said they had been there.

Q. Which one of them said he had lived on Island Creek?

A. Well sir I don't know that either of them said they ever

lived on Island Creek, but they stated that they had relatives lived there.

Q. Who were *there* relatives?

A. Clines and Hatfields.

page 9.] Q. Give the name of one of their relatives living on Island Creek at that time?

A. Well sir I *couldent* do that, but what they stated they had *rela* living all over that country.

Q. Had you at that time ever been on Island Creek or Gilbert Creek?

A. Well sir some time I can't tell you exactly the date—twenty-five or six years ago I traversed the valley of Guyandotte to Logan Court House and up Island Creek and across through the country there and I don't know anything about its forks or tributaries; I crossed Tug River into Pike County, Kentucky.

Q. That then is the extent of your acquaintance with the sections mentioned above, is it?

A. Yes sir at that time. I just know but little about the country and what I have heard about it.

Contesting defendants renew their motion to strike out the whole of the witnesses evidence.

RE-EXAMINED

By Judge Stiles.

Q. On what creek was your father living at the time of the conversation?

A. On Indian Creek—the third creek of any size above Gilbert Creek the creeks are Gilbert first, then Huff and then Indian.

And further this deponent saith not.

B. U. MORGAN.

Witness claims 1 day and 22 miles travel.

A. B. WORKMAN, a witness introduced in behalf

page 10.] of the defendant King, after being first duly sworn upon oath testified as follows:

Examined by Judge Stiles.

Q. State your age, residence and occupation?

A. Age about 54 years, I reside in Wyoming County and by occupation farmer.

Q. How long have you lived in Wyoming County and in what parts thereof.

A. I have lived in Wyoming County about forty years on the waters of Guyandotte River. I have lived on Indian Creek for the last twenty years and *befor* that I lived in main Guyandott River, still above.

Q. Did your father and grandfather live in that country?

A. Yes sir.

Q. Have you been acquainted with the old people living along Guyandotte River in Wyoming and Logan Counties down towards Logan Court House?

A. Yes sir a part of them towards Logan and in the upper end of Wyoming I was acquainted with them up there as that is where we first settled when we first came there.

Q. Was that country on down through Guyandotte River thickly or thinly settled in your earlier days.

A. It was very thinly settled when we first came to this country and for several years afterwards.

Q. Did you ever hear in your younger days and before the institution of the suits by Mr. King over the Morris grant that are commonly called the King cases, any tradition or reputation that the—some of the creeks along Guyandotte River, particularly the creek called Island Creek which empties into the river near Logan Court House had in early days of that country been known by names different from by which they are now known?

Objected to by contesting defendants.

page 11.] Well I have heard of them having different names —two or three different names. I have heard of old men having *differ* names for them.

Motion by contesting defendants to strike out the answer.

Q. State whether or not that report or tradition related to Island Creek?

A. No sir I think it was to Gilbert Creek which used to be

called Kettle Creek and then it was changed to War Creek I have heard old men say.

Q. What it anything have you heard them say with reference to Island Creek having called by a different name?

Objected to by contesting defendants.

A. Well I don't remember whether I have heard of that creek being called by a different name or not. Old man Evens—Billy Evens was the only settler that we was close to when we moved into that country. I have heard him complain, the boys when we first moved in there were *complain* of having hard times and he said that they *dident* have any hard times as compared with the time when he first settled there as he had to go to Logan Court House at the mouth of Gilbert to get his coffee and groceries as there was no stores nearer than there. I have heard him tell that many a time—that they had to go eight and ten miles to gatherings and he was a terrible man to brag and boast. They would have to go eight and ten miles and twelve miles to get enough men to pile their logs in clearing the ground.

Contesting defendants moves to strike out the last two answers.

Q. Where did you hear this conversation with old Billy Evans.

A. Why I have heard him right at my father's house where we had a heap of gatherings.

Q. Did you hear this talk at those gatherings?

A. Yes sir.

Question and answer objected to by contesting defendants.

A. A good many of the men would gather in the evening before.

page 12.] Q. How old a man was old Billy Evans at that time?

A. Well sir I could*ent* tell you exactly he was a *tolerble* old man—he was white and I expect he was in sixty.

Q. How long ago was it that you heard that talk?

A. It was before the war. I have heard him talk it before

the war and I have him talk it since the war. We were close neighbors we did*ent* live more than two miles apart from away before the war until I married and came on Indian Creek *Creek*.

Contesting defendants moves to strike out the whole of the evidence of this witness.

CROSS-EXAMINATION.

By Mr. Shepard.

Q. How old were you when you heard this story from Old man Evans?

A. Well I expect sir I was about twelve or fourteen years old when I heard him first talk that.

Q. How old were you when you first began to attend the gatherings that you speak of?

A. Well twelve or fifteen years old I reckon.

Q. Do you now state Wyoming County was very thinly populated at *at* that time?

A. Yes sir it was very thinly settled through that section of country. You had to go eight and ten and twelve miles to get men to do your work.

Q. Do you mean to state that people lived no closer than that?

A. Of course they lived some closer but to get your hands you had to go that distance.

Q. You mean then that in order to get the number of hands required at a log rolling in that neighborhood you would have to go ten or twelve miles to the furtherest one?

A. Yes sir.

Q. Where in Wyoming County is the neighborhood you have been speaking about?

A. Near the upper end at what is called the
page 13.] mouth of Slab and old man Evans lived at the mouth of Barker just below there.

Q. How far did you live above the mouth of Gilbert Creek.

A. Well sir I could*ent* answer that question for I was never up and down that Guyandotte River in my life. I was never at Logan Court House but once in my life and I was *pass* through there then.

Q. That is a distance of forty-five or fifty miles above Gilbert Creek, is it not?

A. Well sir I would have to guess at it but I think it is that far.

Q. That part of Wyoming County in which you lived was the most mountainous and thinly settled of any part in the county, was it not?

A. Yes sir I suppose it was.

Q. Do you not now recall that that portion of the county more suited to cultivation had been settled and cleared up long before you can remember?

A. Yes the better part of the county was cleared up before I can remember—I mean the better lands.

Q. All you know about the names of any creeks then in Logan County is what old Billy Evans told you is it?

A. No sir there is another old man by the name of Hatfield and I have heard him tell that Gilbert Creek was called Kettle Creek and War Creek and then Gilbert, he said it had been changed to three different names. I heard him talk about it?

Q. Is he the only other one you heard talk about it?

A. Well I could*ent* state but I have heard a heap of talk about it—the names of the creeks but I am certain I heard him talk about the names of the creeks and having different names.

Q. Were you acquainted with the citizens then living in the neighborhood of Gilbert Creek and Island Creek?

A. No sir, nothing more than these men I am a telling you about. This old man Hatfield had relations down there and he went there *a* sight—He lived somewhere down in
page 14.] that country but I don't know how far down.

Q. As a matter of fact you don't know who lived down there in those neighborhoods at that time do you?

A. Why of course I don't.

Q. And all you know about Hatfield ever living down there, or Evans going down there is just what you heard them say.

A. Yes sir.

Q. Was Hatfield or Evans related to you in any way?

A. No sir.

Q. You have told all you know about the changes in the names of the creeks down there have you?

A. Yes sir. I have heard my grandfather talk a good deal about the creeks and he was in there at the time of the Indian War.

Q. You have testified before a number of times in the trial of the King cases have you not?

A. Yes sir.

Q. And each time you have so testified heretofore, you have told what your grandfather told you about the killing of Gilbert and Gilbert's creek taking its name from the circumstances, have you not?

A. I don't remember whether I did or not probably I might have done it.

Q. State what your grandfather did tell you about the killing of Gilbert?

Objected to by defendant King.

A. Well I don't remember whether he ever told me that it took its name from that but I have heard other men say that it took its name from the killing of Gilbert. My grandfather did tell me that that it was drawing late and Gilbert and Lusk went down one fork of the creek and grandfather Workman and a man by the name of Draper and I think there was more in the party but there was only two went the other way and it was agreed that they should meet at the forks of the

page 15.] creek and late that evening they heard a powerful lot of shooting and Gilbert and Lusk did*ent* come in that night and the next morning they started out to hunt them and *the* found Gilbert dead and scalped at a lick and in hunting around they found an Indian that had been killed and dragged off. Lusk was captured and carried off and some time afterwards got back and told how it happened. Lusk told that when they went to the lick they saw the Indians knap sacks hanging up and then *then* Indians fired into them and Lusk was

shot through the hand and started to run and Gilbert told him not to leave him as he was shot through and he went back and they captured him.

Q. Where was that lick located?

A. Well I don't know that old grandady ever told me but I have heard different people say that that is what the creek took its name from.

Q. What is the name of the branch at the mouth of which your grand father spoke of the lick?

A. I have heard it was on Gilbert—that is what Gilbert took its name from.

Q. The history of the killing of Gilbert and the creek on which he was killed taking the name of Gilbert from that occurrence is a well established tradition, it is not?

Objected to by Defendant King.

A. I have heard that ever since I have heard of the crime being done.

Q. You heard Andrew Hatfield and Henry Cline—two men referred by the witness Morgan say that Gilbert Creek took its name from the killing of Gilbert, did you not?

A. Yes sir I have that talk out of them two men.

RE-EXAMINED.

By Judge Stiles.

Q. Is old man Billy Evans still living?

A. No sir he is dead.

Q. At the time he told about going down to
page 16.] mouth of Gilbert Creek to where Logan Court House now stands did any of the persons present say anything indicating that he was mistaken as to that creek at Logan Court House being Gilbert creek?

Objected to by contesting defendants.

A. No sir there was *nara* a word said about it.

RE-CROSS-EXAMINED.

By Mr. Shepperd.

Q. Please repeat what Billy Evans said about going to Logan Court House at the mouth of Gilbert?

A. Why he said he had to go there to get his coffee and

groceries at the mouth of Gilbert where Logan Court House now is.

Q. Did he use the expression "where Logan Court House now is?"

A. Yes sir "where Logan Court now is," he said.

Q. Then why did you not use that expression in your testimony in chief and before you heard counsel use it in your presence just now?

Objected to by defendant King.

A. I said at the mouth of Gilbert where the Logan Court House now is I said that at the time and the commissioner must have misunderstood me.

Q. How old were you when he told you that?

A. About twelve or fifteen along there I heard him talk it at different times—before the war after the war.

Q. How old was Evans then?

A. Well sir I could*ent* tell you exactly he looked to me a man of sixty years old fifty or sixty—he was getting pretty grey I know.

Q. You say you heard him have this talk before and after the war how many years before the was war it?

A. About two years before the war as well as I remember.

Q. Then you were about eight or nine years old when you heard that conversation?

A. I did*ent* state that I was about as well as I remember I was about twelve or thirteen somewheres right along [page 17.] there. I was ten years old when we moved there.

Q. How long after you moved there was it until we heard this conversation.

A. I don't remember just exactly it might have been a year and it might not have been so long or it might have been a little longer.

Q. That would make it 1861 when you heard the conversation then?

A. I could*ent* tell you it was somewheres along there I never kept any account.

Q. You was then living in Wyoming County?

A. Yes sir.

Q. What county was that at the time Evans spoke of going to the mouth of Gilbert Creek?

A. Well sir he never said what county it was but I suppose it was Logan then.

Q. How do you get that impression?

A. Well I just heard them say it was Logan all the way up.

Q. Did you hear Evans speak of going to court at Logan Court House?

A. Yes sir. He called it Logan Court House.

Q. Did he speak of going to court at Logan Court House when he was a young man?

A. No that was after he settled in there—he was a married man when he settled there—he came from North Carolina and settled there and he was one of the first settlers on Guyandotte River. I don't know that he was a married man when he settled there but I supposed that he was.

Q. You certainly must mean that Evans was one of the first settlers in that section on Guyandotte River, is that correct?

A. Yes sir.

RE-EXAMINED.

By Judge Stiles.

Q. What was your father's name?

A. Charles Workman.

Q. Is he living?

A. No sir he is dead.

Q. How long has he been dead.

page 18.] A. Five years.

Q. How old was he at the time of his death?

A. He was up in seventy, between seventy and eighty.

Q. Do you know how long Evans has been dead?

A. No sir I don't.

his

A. B. X WORKMAN.

mark.

Witness claims 1 day and 24 miles travel.

WILLARD MORGAN, a witness introduced in behalf of the defendant King after being first duly sworn upon oath testified as follows:

EXAMINED

By Judge Stiles.

Q. State your age, residence and occupation.

A. Age 64 next August, reside in Wyoming County on Indian Creek and *and* by occupation farmer.

Q. How long have you lived in that port of the country?

A. Sixty-four years nearly—I was bred and born there on the same creek.

Q. Have you been acquainted with older people along down Guyandotte River below where you lived in Wyoming and Logan Counties in times past?

A. A good many of them sir—yes.

Q. State whether or not at any time prior to the institution of the so called King suits you ever heard among the people referred to any tradition or reputation as to the creeks along Guyandotte River, or some of them particularly Gilbert Creek and Island Creek have *born* names in early days different from the names by which they are now known?

Objected to by defendants—contesting.

A. I reckon I have from some parts of the Guyandotte River.

Q. You may state what you have heard in that way and when with reference to Gilbert Creek and Island Creek.

Objected to by contesting defendants.

page 19.] A. I heard an old gentleman that is dead now say that Gilbert Creek was once called War.

Q. When and where was this?

A. That was on Gilbert Creek as it is known in between 1883 and 1885.

Q. Who was the man referred to and where did he live?

A. Peter Cline—they called him scald head Peter. He lived on Gilbert Creek.

Q. Go on and tell how this conversation came up?

A. The man and me left Tug River and went up War Creek in the direction of Gilbert and made our way through to this old man Cline it was very late in the evening. We put up to stay all night at his sons—in the same yard in which the old gentleman was in. The man that was with was very anxious for jokes and we went in to see the old man after we heard how old he was and after talking a good deal I told him how we got there—that we came up a creek by the name of War to get to this place; he remarked that that was once was called war or that this was once called war I cant say just how he said it, but any how that the creek we were then on used to be called War Creek. And then from one thing to another we talked about and went into hunting serapes.

Q. How old a man was he.

A. He called himself sir 105 years old and his wife was 103 he said.

Q. Who was present when he spoke of that creek being called War Creek?

A. John Kahle and the two old folks and myself.

Q. Did the old lady have anything to say on the subject?

A. I don't know that she had anything to say on that subject but she would say a word once in a while. He would ask her if such and such things were not so and she would speak right readily.

Contesting defendants move to strike out the last two answers.

Q. You may state what you heard among any of
page 20.] the old people that you knew about any change in the name of Island Creek or about its formerly been known by some other name.

Contesting defendants object to this question and ask that the community in which such persons live be fixed.

A. I heard an old *gentlman* tell my father that Island Creek used to go by the name of Gilbert. This was right at my father's house and it was an old gentleman by the name of

Andrew Hatfield and there were two or three others present. The way he come to say this I was describing where I had been camped while soldering during the late war—at the mouth of Island Creek and his *remard* was to my father as well as I remember, "Uncle Jonathan that used to be called Gilbert Creek." There was no dispute *of* query over what Mr. Hatfield said.

Q. Who was present besides yourself and your father and Andrew Hatfield, if you remember?

A. Henry Ellis and James H. Shannon as well as I remember, they were both neighbors—lived ten or twelve miles. When I first recollect there were not over five families on our creek and now there are over one hundred and fifty—that is my judgment that there are one hundred and fifty families on the creek now.

Q. Where did this conversation occur?

A. On Indian Creek.

Q. Where did Henry Ellis live?

A. He lived on Huff's Creek—Little Huff's Creek which heads up there beside of Indian Creek.

Q. Where did Shannon live.

A. About thirteen miles from my fathers about three miles below Baileysville.

Q. Do you know where Andrew Hatfield lived or had lived?

A. At that time on Indian Creek about three miles from my fathers.

Q. Do you know whether he had lived down in Logan County and was acquainted in that neighborhood?

A. I never knew the old man in Logan County
page 21.] but I have heard him speak of living there a good many times. He moved from the mouth of Sandy Huff to our neighborhood when he come there, in 1858.

Contesting defendant move to strike out so much of the answer as relates to what Hatfield said.

Q. How old were these men at the time this conversation occurred?

A. A Well sir I would*ent* put the three men under seventy-five years.

Q. About how soon after the war did this conversation take place?

A. It was right soon after it if it was not in the time of the war I remarked about where I had been camped and that is what had given rise to the conversation.

Q. You refer to the war of the Rebellion?

A. Yes sir.

Contesting defendants move to strike out the whole of the foregoing testimony, as *inadmissable.*

CROSS EXAMINATION

by Mr. Shepard.

Q. Where did your father *father* live and how for do you live from Gilbert Creek and from Island Creek?

A. That would be a little puzzle to me for I dont exactly know. The way Kahle and me went we travelled it in about a day and a half to where we stayed all night on Gilbert Creek—we wasted some time on the way; we were trying to buy cattle on the way. I dont know what they call it to Island Creek but I expect it is thirty-five miles probably more, I *couldent* tell.

Q. How did Peter Cline say the creek on which he lived took the name of Gilbert Creek?

A. I dont know that he said how? Nor I dont think he said!

And further this deponent saith not.

WILLARD MORGAN.

Witness claims 1 day and 20 miles travel.

page 22.] R. L. BREWSTER, a witness introduced in behalf of the defendant, King, after being first duly sworn upon oath testified as follows:

EXAMINED

By Judge Stiles.

Q. State your age, residence and occupation?

A. Age 45 years, residence Wyoming County and by occupation a farmer.

Q. Did you ever live on Tug River, and if so what portion of it and when and how long?

A. Yes sir I lived on Tug River from Thacker Creek down as far as Big Creek, I went there when I was eighteen years old and stayed there seven years.

Q. Did you live at more than one place along the river?

A. Yes sir. I worked—was just hired you know—I worked for Elias Hatfield who lives on Mates Creek and for Vance on Thacker Creek and I worked for Wallace Williamson for a while that is away on below and Jim Deskins and Andy Miller.

Q. During the time you lived in that neighborhood did you become acquainted with the people living there, especially the older people?

A. Yes sir.

Q. Were you associated with them frequently?

A. Yes sir there was old people there that I was with frequently.

Q. State whether or not during that time or at any other time, prior to the institution of the so-called King cases, you heard any tradition or reputation among those people concerning the creeks in that neighborhood, or any of them, having been known in earlier times by names different from the names by which they were then known?

A. Yes sir I have learn them say, there was other name for one creek is all I heard about it.

Contesting defendants objected to question and answer and moved to strike out the answer.

Q. What creek was that and by what name was it said formerly to have been known?

Objected to by contesting defendants.

A. That was Thacker Creek—its old name was
page 23.] Turkey Creek is what I heard them say.

Q. You may, state who you heard so call it, who was present and what was said?

A. I heard James Vance, I don't remember who all was there out there was Jim Vance and his two sons—John and Jim and there was a Cesco there but I have forgotten his given name. They

was talking and old man Vance said that what changed the name of that creek was a man by the name of Thacker who settled at the mouth of the creek.

Q. Did he say what was the name of the creek before Thacker settled there?

A. He said the old original name was Turkey Creek.

Contesting defendant moved to strike out the last two answers.

Q. Where did this occur?

A. It was at the camps there on Thacker Creek where he boarded the hands.

Q. State whether you heard anything with reference to the same matter from any one else at any other time.

Objected to by contesting defendants.

A. I have heard John Ferrell say about the same thing.

Q. When and where was that.

A. That was on Pigeon Creek.

Q. How did the matter come up and who was present if you remember?

A. I *couldent* state who was present exactly as I *dident* know the people there; the old man Ferrill was a preacher and he was the man who was doing the talking and he was talking to several people there at that time.

Q. What were they talking about?

A. I heard him say that Thacker Creek was once called Turkey Creek. They were talking about the creeks being changed and surveys, but I *wasent* paying much attention to them and they were talking about other creeks too about there being changed but I dident remember what they said about them.

Motion to strike out.

Q. About how many people were present if you

page 24.] remember?

A. It was just at a meeting—a preaching they had, there was two or three more preachers present and there was forty or fifty or maybe one hundred people present—I dont know how many, there was a congregation.

Q. What did they call a meeting or gathering of that sort?

A. It was what they call a regular Hard Shell Baptist Association.

Q. What were you doing there?

A. I just went over there to hear them preach.

Q. Was Ferrell an old man or *an* young man.

A. He was an old man.

Q. Do you know whether he is living or not?

A. Why I dont know sir *whether* he is or not I *suppose* he is dead he was a very old man then.

Q. Is old Jim Vance dead?

A. I have heard he was dead but dont know.

Q. How old a man was Vance?

A. I don't know how old he was but he was getting very grey when I left that country—that has been twenty *fours* ago I believe.

Q. State whether or not you heard any one else say anything about Thacker having been formerly known as Turkey Creek and if so what you heard and from whom.

Objected to by contesting defendants.

A. I have heard John Deskins and a man by the name of Austin say that Thacker used to be called Turkey Creek. That was in *Kantucky* at the mouth of Big Creek where I heard that conversation.

Q. How far from the mouth of Thacker Creek?

A. I believe they call it as well as I remember eighteen miles. There *wasent* at that day and time any road and it was all guessed off.

Q. Do you know where Deskins had previously lived?

A. He lived there just below Big Creek on the River on the Kentucky side. One mile or two miles or maybe three miles I dont know which but along there it has been so long ago since I have been there.

page 25.] Q. Do you know whether Austin or Deskins are living?

A. No sir I dont know.

Q. About how old were they at the time.

A. They looked to be seventy-five or eighty years old.

Q. How far was this meeting or *association* held from Thacker Creek.

A. I guess about ten miles *a* nigh as I could guess.

Q. State whether at these various times that you heard the former name of Thacker Creek and how it got the name of Thacker discussed, there seemed to be any disagreement about the matter among the people present?

A. Well I heard Austin and old man Deskins say that they held a convention in that country and changed the name of some creek and I dont know whether they mentioned Thacker Creek or not and dont remember what creeks, but it was about some surveys—big surveys. They said a man by the name of Thacker settled at the mouth of the creek and cleared off the land and the creeks name was then changed from Turkey Creek to Thacker Creek.

Q. What I wanted to know by my question is whether the people present who heard this talk about the former name of the creek at these various times agreed with it or disputed it?

Objected to by contesting defendants.

A. They never agreed or disputed it that I ever knowed.

Contesting defendants move to strike out the whole of his evidence.

CROSS EXAMINED.

By Mr. Shepard.

Q. Where did the John Ferrell live that you speak about?

A. On Pigeon Creek.

Q. Was he the father of Jake and F. A. J. Ferrill?

A I think he was.

Q. Was his statement that the name of Thacker Creek was originally Turkey Creek part of his sermon on that occasion?

A. No sir there *wasent* no sermon to it, it was

page 26.] after the preaching was over.

Q. Was that statement made in a house or out of doors?

A. It was out of doors.

Q. How many people were present?

A. I don't know sir.

Q. Give me the name of some one present.

A. I was a stranger and *dident* know the name of any one present except Sam Varney, who I believe is the only one I knew.

Q. Was Sam Varney present when he made that statement?

A. He was there I dont know whether he heard him or not. He was right close around though when the old gentlemen was talking.

Q. Give me the name of one of the other preachers present?

A. Old Bill Collins was there.

Q. Where does he live?

A. Well I told you lived on Ben when I was there—I was there seven years and that was the second year after I went to that country and I have been away from there twenty four years and I dont know where the old man is now.

Q. Name some other person who was present?

A. I *couldent* name any more for that was the first trip I was ever on that creek and everybody was then strangers to me.

Q. Describe the place where *Joan* Ferrell made that statement?

A. Well sir I *couldent* do that—it was a preaching ground and some sat on benches and some stood around—and the preaching was out in the *forset*.

Q. Near whose house was it.

A. I could see houses up the creek and down the creek but dont know who lived there at that time.

Q. Was it at the mouth of any branch, if so what branch?

A. I dont remember whether it was or not.

Q. Was it near a school house or a church?

A. I wont be positive about it but it seems to me there was some kind of an old church near there. I *dident* stay over night there but went back to Mates Creek.

page 27.]

Q. What time did you get back?

A. About sun down as well as I remember.

Q. Where did you get your dinner that day?

A. I *dident* get any dinner until I went back to where I was working at Elias Hatfields before I got any.

Q. Was Elias with you?

A. No sir.

And further this deponent saith not.

R. L. BREWSTER.

Witness claims 1 day and 26 miles *travell*.

LEWIS BAILEY, a witness introduced in behalf of defendant King after being first duly sworn upon oath testified as follows:

page 28.]

EXAMINED

By Judge Stiles.

Q. State your age, residence and occupation.

A. Age 61 years, residence Wyoming County, and by occupation a farmer.

Q. How long have you been living in Wyoming County?

A. About three months.

Q. Where did you live before that time?

A. Buchannan County, Virginia. About two miles from the Tug River.

Q. How far from Turkey Creek that comes into the river the West Virginia side below *Greenbriar* Creek?

A. About three miles from there. I lived on Long Branch Creek.

Q. Who was your father?

A. Harvey Bailey.

Q. Where did he live in his life time?

A. He was living at Wyoming City when he died which is at the mouth of Bull Creek.

Q. What relation were you to Eli Bailey.

A. He was my Uncle.

Q. Where did he live? in his life time?

A. At the mouth of Turkey Creek and at the mouth of Panther Creek.

Q. Is he living now or is your father?

A. No sir.

Q. How long ago did they die?

A. I dont know exactly about ten years one of them and about fifteen the other one.

Q. Which *if* them died first?

A. Eli Bailey.

Q. Do you know about how old he was at the time of his death?

A. I dont remember.

Q. State as near as you can.

[page 29.] A. He was up in seventy years.

Q. Did you live within a few miles of Turkey Creek all your life prior to *to* moving to Wyoming County?

A. I lived near Turkey Creek all my life.

Q. While living in that neighborhood did you learn or hear how Turkey Creek got its name.

A. I heard it got its name by the killing of a big Turkey on it.

Q. When did you hear that?

This and the foregoing questions are objected to by the contesting defendants.

A. I have heard it ever since I can recollect.

Q. From whom did you hear it?

A. My father.

Q. When and by whom was the turkey killed?

A. The turkey was killed by Eli Bailey. I heard my father say that he killed it.

Q. State what was said about the matter of the killing of the turkey and the naming of the creek?

Objected to by contesting defendants.

A. He said when he killed the turkey he *picket* it up said call this Turkey Creek?

Q. Who said that?

A. Eli Bailey; my father told me that Eli Bailey said that.

Q. Was your father with Eli at the time he killed the turkey?

A. I dont know—I dont recollect whether he said he was with him or not.

Q. Did you learn from either of these Lee when this occurred?

A. No I dident learn.

Q. How old were you when you first heard about it?

A. I have heard it ever since I can recollect.

page 30.] Q. Did you hear this spoken of more than once?

A. Have heard my father talking about it different times.

Q. Did he tell about it to different persons?

Objected to by contesting defendants.

A. I dont know.

Q. Was the country around Turkey Creek for some miles thickly settled or thinly settled when you first heard about the naming of the creek?

A. It was *tolerbly* thinly settled.

Q. Was there any one living on Turkey Creek at that time?

A. I dont know.

Contesting defendants move to strike out the testimony of the witness.

And further this deponent saith not.

his

LEW *x* BAILEY.

1 day mark

18 miles.

page 31.] It is ordered that these proceedings be now adjourned until tomorrow morning at the same place.

J. T. GRAHAM.

Commissioner.

Welch, West Virginia, July 4th, 1902.

Met pursuant to adjournment on yesterday. Present: Same parties as on yesterday.

HIRAM CHRISTIAN, a witness introduced in behalf of the defendant King after being duly sworn upon oath testified as follows:

EXAMINED

By Judge Stiles.

Q. State *your* age, residence and occupation?

A. Age 66 year, residence two miles east of Welch, McDowell County and by occupation a lawyer.

Q. Where were you born and where have you lived during your life time?

A. I was born where Iaeger now is which was then in Tazwell County, Virginia, but now in McDowell County, West Virginia.

I have lived in McDowell County, except one year in which I lived in Tazwell County.

Q. In what portions of McDowell County?

A. Up to the out-break of the Civil War I lived at the mouth of Dry Fork, where Iaeger now is; since that time I have lived in the proximity of where Welch now is.

Q. What public office if any, have you held in this county?

A. I was prosecuting attorney of the county for three successive terms.

Q. What was your fathers name and how long did he live on Tug River or in that neighborhood?

A. His name was Mastin Christian; he lived at the mouth of Dry Fork, where Iaeger now is, I supose from the time

[page 32.] he married until his death which was in November 1852—the time of his death. He died in the fifty second year of his age. Two years of that time, however, he lived in Missouri.

Q. In your earlier life and while you were living at the mouth of Dry Fork were you acquainted with the country below there as far as Thacker Creek or beyond and with the people living along and in the neighborhood of Tug River and Thacker Creek, particularly with the older settlers, if so state the extent of such *acquaintance?*

A. My first *acquaintence* as far down as Thacker Creek was when I was twelve years old, after that time I was more or less acquainted down that low and further down until I was twenty years of age; from the time I was seventeen years of age until I was twenty I spent most of my time in that country and was more or less acquainted with all the old people that was living then along the river from Iaeger to the mouth of Mate and some below.

Q. During the time of that *acquaintence* with that country and the people living there did you learn of any traditional or reputed *chans* in the name of Thacker Creek from some other name to Thacker or the names of any other creeks in that neighborhood, if so state what that repute or tradition was?

Objected to by contesting defendants.

A. When I was twelve years old my grandfather—Robnett, my father and myself, were riding across the mouth of Thacker, where the road crossed it on our way to the mouth of Blackberry, and my grandfather Robinett, remarked to my father that Thacker once was called Turkey Creek—that it had taken its name Thacker from a man by the name of Thacker who settled either on or at the mouth of the creek. I also heard old Davy Mounts, who lived about two miles above the mouth of Peter Creek, in a conversation with my father, say that Thacker was once called Turkey Creek. I might have heard several other of the old people say the same but I am not positive and my mind dont serve me, right at present, whether I did or not.

page 33.] I dont recall hearing of the change of the names of any other creeks on Tug.

Contesting defendants move to strike out the entire answer.

Q. How old a man was your grandfather, Robinett, and where did he live?

A. I cant say how old he was—I suppose he was among the oldest people of the country, he lived on Peter Creek in Pike County Kentucky, I guess about five miles from the mouth of Thacker at the time I heard the conversation between my father and him about Thacker being called Turkey; He lived in that neighborhood at the earliest of my recollection until after the Civil War.

Q. Who lived at the mouth of Thacker Creek about the time of your *acquaintence* with the place?

A. Old Jonnie Ferrell.

Q. Do you now recall hearing him at any time say anything upon this subject?

A. Since you have mentioned it I now recall that I was staying all night at Old Jonnie Ferrells at the mouth of Thacker some time

between the seventeenth and twentieth years of my age and he told me that Thacker was *one* called Turkey and that it had taken its name from a man by the name of Thacker that settled on it.

Question and answer objected to by contesting defendants.

Q. What was Ferrells occupation?

A. He was a farmer.

Q. Do you know whether or not he was also a preacher?

A. He was I have heard him preach a many a time.

Q. Can you give the names of the people living from Thacker Creek up to the creek now known as Turkey Creek—the people who were living along the river at that time?

A. Old Jake Cline was the first that lived above Thacker—he lived on the West Virginia side opposite the mouth of Peter about two miles above Thacker; and Jack Mounts was the next on the West Virginia side; Charles Mounts next—I called

page 34.] the West Virginia side, but it was the Virginia side at time; Elijah Mounts next on the Kentucky side of the river; Old Davy Mounts next on the Virginia side; Pete Mounts next on the Virginia side; Mike Mounts next on the Kentucky side; John Daniels next on the Virginia side; John Steele next on the Kentucky side; Dick Daniels next on the Kentucky side; Jim Prather next on the Kentucky side; Asbury Hurley next on the Virginia side; Bill Prather next and he lived part of the time *one* one side of the river and part on the other; Dick Ratcliff next on the Virginia side; Old Billy Cline next on the Virginia sideOld Billy Collins on the Kentucky side; next was at the mouth of Turkey on the Virginia side—Old Eli Bailey lived there. When I was first acquainted, for some years, Eli Bailey lived at the mouth of Turkey and then he moved up on Panther Creek; a man by the name of John Dempsey moved to the mouth of Turkey Creek and lived there up to the time the civil war broke out.

Q. Near what creek did Old Billy Collins live?

A. He lived on the *Kentuck* side right opposite the mouth of Ben Creek.

Q. Do you whether or not he was a preacher?

A. I do he was the first man I can remember of ever hearing preach.

Q. Do you recall whether there was any one present at John Ferrells at the time you heard him speak of the change in the name the creek from Turkey to Thacker?

A. I dont at this time recall any person being present but my *impresion* there were members of his family present.

Q. How was it in this respect at the time you heard David Mounts talking about it?

A. I dont remember any body but one person being present, and if my mind serves me correctly Mounts daughter—Sally, who married a brother of mine was present, there might have been other but I dont recall them.

page 35.] Q. Over what period of time did the conversations with regard to Thacker Creek, that you have mentioned, extend?

A. The first conversation I heard was when I was twelve years old, the other conversations were between the seventeenth and *twenglieth* years of my age.

Q. Do you remember hearing what was Thacker's first name?

A. Why I dont remember I might have heard it but dont remember.

Q. Was it or not the common repute among the people and in the neighborhood in the vicinity of Thacker Creek, that it had formerly been called Turkey Creek *Creek*, and had acquired the name Thacker in the manner you mentioned?

Contesting defendants object to the question because the witness has already stated the names of all those he heard speak on the subject and it is a question for the court whether that is general reputation or tradition.

A. I cant say that it was the common repute among all the people I can *oly* say that all that I ever heard speak of it at all spoke the same, and I have given the names of all that I recollect at the present time of hearing speak about it.

Q. Are you, or have you in the past, been acquainted in the

neighborhood of Logan Court House and with Island Creek which flows into Guyandotte River, at that place?

A. To some extent but my *acquaintence* has been somewhat limited in that country.

Q. You may state whether you ever heard prior to the civil war any talk or tradition or repute with regard to there having been a change in the name of Island Creek or of any other creeks on Guyandotte river above there in Logan County?

Objected to by contesting defendants.

A. I heard Henry B. Harmon tell my father that the names of all them creeks over there had been changed—I think he said all. He said there would be trouble or lawing some

page 36.] time over it. Now what lead up to that conversation was he had been over in that country running what was called big survey, lines. My father was quite hostile to big surveys and he was rather scolding Harmon for running the lines of the big survey and Harmon *remark* that the surveys could never be established, that the names of them creeks—or all the creeks one or the other, had all been changed.

Answer objected to and motion to strike the same out by contesting defendants.

Q. About when did this conversation occur?

A. I cant give dates at present, except the last conversation that I heard between my father and Harmon—that was either in the last of October or first of November 1852. My father was on his death bed at the time of the last conversation and Harmon came there to stay all night as he usually did. Harmon lived in Tazwell County and was distantly related to my father and when he came through that country he stopped at my fathers. All of these conversation occurred between 1847 and 1852 I think—it was during the time Harmon was running those lines.

Contesting defendants object to the whole of the answer and move to strike it out.

Q. Did he say what the *fromer* names of the creeks had been?

A. My recollection is that he said Island Creek had been called Gilbert or that Gilbert had been called Island, I am not positive which way.

Objected to by contesting defendants and motion to strike same out.

Q. Is Harmon or any of the persons whose statements or conversations you have given, now living?

A. No there are none of them living that I know of. I don't remember any person whose name I have mentioned while on the witness stand, except Sally Christian, who is now living.

page 37. | Q. Do you remember hearing any other persons who are now dead speak of Island Creek having formerly been known by a different name, if so you may state what you remember?

Objected to by contesting defendants.

Q. I remember hearing Old Mike Cline and Old Abner Lester get in an argument once about where a man by the name of Gilbert who was reputed to have been killed by the Indians, where he was killed, and one said he was killed by the Indians, where other said he was killed on Island Creek and Cline said that the name of Island had been changed to Gilbert or that the name of Gilbert to Island and I ain't sure which.

Contesting defendants move to strike answer out.

Q. You have stated that you were acquainted with the old settlers living up and down the river in the territory embracing the creek now called Turkey Creek that comes into the river above Ben Creek, you may state whether or not you have heard among those people how that creek was reputed to have takn its name and if so state what that repute was?

Objected to by contesting defendants.

A. I never heard any body say anything about it except old Eli Bailey while he lived at the mouth of Turkey; he said that somebody had killed a turkey and hung it up there at the mouth of the creek and it taken its name from that—I think he told

me who it was—who it was reputed to have been but I don't now remember.

Contesting defendants move to strike out the answer.

Q. About when did he tell you this?

A. I think it was some time between the seventeenth and twentieth year of my age.

page 38.] The contesting defendants here move to strike out the entire testimony of the witness.

CROSS-EXAMINATION.

None.

H. CHRISTIAN.

Witness claims 2 days and 4 miles travel.

E. N. SENTER, a witness introduced in behalf of the defendant King, after being first duly sworn upon oath testifies as follows:

EXAMINED

By Judge Stiles.

Q. Where do you reside and what official position do you hold?

A. I reside at Oceana, Wyoming County, and I am Clerk of the Circuit Court of said county.

Q. How long have you been clerk of that *court?*

A. I have been Clerk of that Court since October 1895 and I have been deputy and business manager of the clerk of that court since January 1891.

Q. Have you seen the printed transcript upon appeal in this case entitled " State of West Virginia against King and others?

A. I have.

Q. State whether you made and certified the manuscript copy of that transcript?

A. I made the principal part of it I compared it all and certified it.

Q. For whom or at whose request did you do this?

A. It has been some time since but as I now remember it

was I had a letter from Mr. J. A. Shepard given me by his father-in-law to make said record.

Q. To whom was that record delivered or trans-
page 39.] mitted by you and who paid your fees and charges for the same?

A. I delivered the record to the same gentleman who brought me the letter from Mr. Shepard and it was my intention to transmit the same by him to Mr. Shepard and my fees for same were paid by a gentleman whom I know as Judge Duke—I don't know his given name, who resided somewhere in Virginia.

Q. What if anything, had Judge Duke therefore had to do with the case?

A. I remember of seeing Judge Duke one time only before that time, at our place—that as I remember it was at the June term of the Circuit Court 1894, altho' I may be mistaken as to the time. He appeared at that time as I now remember, and claimed that our court did not have jurisdiction of this case as a suit for the same purpose had been brought in Logan County Circuit Court prior to this time,; if he had any other connection with the case at our place I do not now remember it.

Q. Did he make any motions or arguments in support of his claim of want of jurisdiction to the court, in said case?

A. Yes sir he argued it warmly and extensively.

Q. What other gentlemen, if you remember, took part in that discussion, if any?

A. Senator Shepard and Judge Ellicott, I believe, at that time. I am not sure of Judge Ellicott being there at that time but it so appears to me. I *havent* had time to think over this matter as I was not summoned until yesterday evening and at that time was away from home and *couldent* examine the records.

Q. Do you remember whether or not, Mr. Campbell participated in that discussion.

A. I dont remember of seeing Judge Campbell there at our

place until 1897 or 1898. If he was there at that time or prior to that time, in this case, I cannot now remember it.

[page 40.] The contesting defendants here move to exclude the whole of the testimony of the witness, as same is not responsive to any issue in this cause and as immaterial.

Cross Examination: None.

E. M. SENTER.

Witness claims 1 day and 16 miles.

[page 41.] It is ordered that these proceedings be now adjourned until tomorrow morning, to meet at Iaeger, McDowell County, West Virginia.

J. T. GRAHAM
Commissioner.

Iaeger, McDowell County, W. Va., July 5"

Met pursuant to adjournment as on yesterday. Present The same parties as on yesterday.

JAMES ALLISON, a witness introduced in behalf of the defendant King, after being first duly sworn upon oath testified as follows:

Q. State your age, residence and occupation?

A. Age I am in my seventy-eighth year. I reside on Ben creek in Mingo County and by occupation farmer.

Q. When did you first settle in that part of the country?

A. Well sir I think I settled there about 1851 and have lived there ever since except two years when I lived up the road above here.

Q. How far is it from where you live to Turkey Creek that comes into Tug River just above Ben Creek?

A. It is about three miles from where I live to the mouth of Turkey

Q. Was there any one living along Tug River for a few miles above and below the mouth of Turkey Creek in the early years of your settlement there?

A. I think there was.

Q. You may give the names if you remember them of the persons living in that neighborhood at or during that time and where they lived?

A. Two miles below the mouth of Ben Creek old Mr. Billy Cline lived I think. I aint certain of it: there was an old gentleman lived at Turkey by the name of Eli Bailey. I dont recollect now just who was above.

Q. Do you remember who, if any one lived near

page 42.] the mouth of Ben Creek?

A. Old Mr. Hatfield lived upon the creek one mile; William lived across the river on the Kentucky side.

Q. How many families lived along the river at that time for a few miles—say from Knox Creek to Panther according to your recollection?

A. There *wasent* very many families on the Virginia side and on the Kentucky side *nara a* one that I remember, below Cline was Ratcliff on the Virginia side. I reckon there was four or five

Q. How many people were there living along that neighborhood during the next ten or fifteen years after you settled there?

A. There *wasent* very many in that length of time they were pretty scattering.

Q. Were you acquainted with the people living in the neighborhood of Turkey Creek in those days?

A. Yes I was acquainted with the people around Turkey—there was no one there but old man Bailey in those days. He is all the man that I recollect of being right there in those days—there might have been some up the river but I *wasent* much around them.

Q. Did you learn or hear among or from the people living in the neighborhood of Turkey Creek how that creek was reputed to have got the name Turkey Creek, if so, you may state what that repute was what you heard or knew?

Objected to by contesting defendants.

A. Well I dont know *know* that I can tell exactly how it got its name but I think that in some conversation with old man Bailey there was so much talk about Turkey Creek being so wild

a country, that I think I make some *enquireys* of old man Bailey how it got its name and other creeks—Ben Creek.; I heard that it got its name, probably from some turkeys being killed on it, I think that is it.

Q. Did you hear who killed the turkey or turkeys?

A. I think that it was old man Lester and old Eli Bailey—not the *bailey* I was talking to, I think I was talking to Harvey Bailey

Question and answer objected to by contesting defendants.

Q. How long ago was that?

page 43.] A. Well I cant tell that it was directly I came into the country.

Q. Where did Harvey Bailey live at that time?

A. I think about where Panther is now.

Q. What relation, if any was he to Eli Bailey?

A. He was his brother.

Q. Are either of the Baileys now living, if not how long have they been dead?

A. I dont suppose either of them are now living and I cant tell the length of time they have been dead.

Q. About how old a man was Eli Bailey when you first knew him?

A. Well sir I cant tell I never enquired but he looked like a man of 35 or 40 years old.

Q. Was there any one then living on Turkey Creek except at the mouth?

A. I dont think for twenty years after I come there there was any one lived on the creek except at the mouth—I doat recollect.

Q. At about what place did the conversation with Bailey take place

A. Well sir I cant tell you that now—it was somewhere along that neighborhood—I dont know whether it was at Baileys house or not.

Contesting defendants move to strike out all of the testimony of the witness.

CROSS EXAMINED

By Mr. Campbell.

Q. Name all of the families whom you can remember who have lived on Ben Creek prior to the war?

A. There was Andrew Hatfield, Alley Burchum and Mr. Wilhite, I think made the families.

Q. Name the families living on Knox Creek.

A. I cant give you the families on Knox Creek for I *wasent* there for years after I came to this country.

RE-EXAMINED:

Q. Did those persons you have meationed as living on Ben creek live down near the river or back up the creek?

A. They lived back up on the creek

page 11.] And further this deponent saith not.

his
JAMES x ALLISON
mark

Witness claims 2 days and
32 miles

W. B. HIGGINBOTHAM a witness introduced in behalf of the defendant King, after being sworn upon oath testified as follows:

EXAMINED
By Judge Stiles.

Q. State your age, residence and occupation?

A. Age 57 years, residence mouth of Turkey Creek, Mingo County, and by occupation farmer.

Q. How long have lived at the mouth of Turkey Creek?

A. A little over 19 years.

Q. Was the neighborhood about the mouth of Turkey Creek thickly or thinly settled at the time you moved there?

A. It was thialy settled.

Q. How many families lived in that neighborhood for some distance up and down the river?

A. About five families lived along the river there within three miles either way.

Q. Were you acquainted with the people living in that neighborhood

A. Yes sir.

Q. You may state whether you have heard or learned how Turkey Creek was reputed, in that neighborhood to have acquired the name Turkey and if so how it acquired it?

Objected to by contesting defendants.

A. I have heard old man Harvey Bailey killed a large turkey on the creek and they concluded to call the creek "Turkey" after that. Bailey did not kill the turkey himself—it was his brother who killed it—Eli Bailey, that is what I always understood.

Q. When did you first hear this?

page 45.] A. It was about 1883 or 1884 to the best of my recollection

Contesting defendants move to strike all of the testimony of the witness out.

CROSS-EXAMINATION.

By Mr. Campbell.

Q. Who told you that Eli Bailey killed a turkey on the creek?

A. Harvey Bailey.

Contesting defendants here renew the motion to strike.

And further this deponent saith not.

W. B. HIGGINBOTHAM.

W. B. HIGGANBOTHAM being recalled testified as follows:

Q. Who else besides Harvey Bailey, if any one, did you hear tell how Turkey Creek got its name?

A. I have heard Conley Blankenship tell about the same *think* that I heard Bailey say and I also heard James Allison say the same thing—they are witnesses in this case.

Q. About when did you first hear them say that.

That was about 1883 or 1884.

Q. Where did they live at that time?

A. Blankenship lived where Alnwick now is and Allison lived *of* the Spring Fork of Ben Creek.

RE-CROSS-EXAMINED.

By Mr. Campbell.

Q. Where did *Connlly* Blankenship say he got his story?

A. As well as I remember he said he got it from the Baileys that lived in that neighborhood.

And further this deponent saith not.

W. B. HIGGINBOTHAM.

Witness claims 2 days and
30 miles travel

page 46.] F. M. DESKINS a witness introduced in behalf of the defendant King, after being first duly sworn upon oath testified as follows.

EXAMINED

By Judge Stiles.

Q. State your age, residence and occupation.

A. Age 50 years, residence I live on Jonny Cake Creek, below Ieager and am a farmer.

Q. How long have you lived on Jonny Cake Creek?

A. Nineteen years, I think.

Q. Where did you live prior to that time?

A. On Dry Fork above Perryville for a couple of years and before that I lived on the mountain out *her* for about two years and before that I lived at the mouth of Turkey Creek in what was then Logan County.

Q. Is that the creek near Ben Creek? and flowing into Tug River?

A. Yes sir it is above Ben Creek

Q. When did you first go there and how long did you live in that immediate neighborhood?

A. I moved there in the year 1866 and left there in the year 1874

Q. During that time were you acquainted with the people—particularly the older people living in that neighborhood?

A. Yes sir in that neighborhood I was.

Q. State whether during that time you learned from or among those people how and when Turkey Creek was reputed to have got the name by which it is now known?

Objected to by contesting defendants.

A. Yes sir Eli Bailey told me how it taken its name. He said

in the time of the war of 1812 his brother Lewis Bailey lay out, there and killed a turkey and roasted it there and called it Turkey Creek.

Q. State whether you heard anything about this matter from any other person, or persons and if so from whom and what you heard.

Objected to by contesting defendants.

A. Harvey Bailey—a brother to Eli Bailey told
page 47.] me that was the way that Turkey Creek taken its name.

Q. Did you learn, who, if any one else was present at the time of the killing of the turkey?

A. Yes sir—a man by the name of Lester was with Bailey—so Eli said

Q. Do you remember whether you have heard any of the other people in that community during that time or at any time prior to the institution of the King cases speak about this matter and if so what was *there* understanding.

Objected to by contesting defendants.

A. I havent heard any one say anything about it as I remember

Q. Where did this conversation with Eli Bailey take place? and who was present.

A. Right on the bank of Turkey Creek on this side near the mouth and my father was present and my brother—and if I mistake not Dow Lockheart was present

Q. Was Bailey living there at that time?

A. No sir.

Q. How did he happen to be there anw how did this subject come up?

A. He came there to see my father about making a deed to a piece of land there at the mouth of Turkey and he told us how it had taken its name.

Q. Did Bailey own or claim the land at the mouth of the creek at that time?

A. Yes sir. He deeded it then to my brother

Q. Are all of those Baileys, or any of them, now living, or are they dead?

A. The old ones are I think all dead. Harvey Bailey's wife is alive. Eli, Lewis and Harvey are dead.

Contesting defendants move to strike out the testimony of the witness. No cross examination.

And further this deponent saith not.

F. M. DESKINS.

Witness claims 1 day and
6 miles travel.

page 48.] CONNOLLY BLANKENSHIP, a witness introduced in behalf of the defendant King, after being first duly sworn upon oath testified as follows:

EXAMINED
By Judge Stiles.

Q. State your age, residence and occupation?

A. If I have my age right I am growing on 76 years, I reside I have been living on Tug River partly in Logan County and then in Mingo and I have moved over into Buchanan County Virginia—where I now live.

Q. How far from Turkey Creek near Ben Creek do you live?

A. About one half a mile.

Q. How long have you lived in the neighborhood of Turkey Creek?

A. I have lived there a good many years—ever since I was a married man, in fact I have been acquainted with Turkey Creek before I was grown.

Q. How far from the mouth of the creek have you lived the greater portion of the time since you were a *your* man?

A. I lived on Knox Creek until I was married and shortly after I was married I moved to Bull creek about five miles from Turkey and stayed on Bull Creek until 1873 when I moved down to the river about a mile from Turkey creek and have

lived there since. I moved just across the river into Buchanan County this spring.

Q. Were you acquainted with the people —particularly the older people living in the neighborhood of Turkey Creek, during your earlier *acquaintence* with that creek?

A. Yes sir I was right smartly acquainted with the most of them for there was very few of them at that time.

Q. You may state whether you heard or learned, from or among those people when and how Turkey Creek

page 49.] acquired its present name and if so how it acquired or was reputed to have acquired it?

A. Heard one of the old man Baileys—I dont remember whether it was Eli or Harvey say how it got its name—He said some old hunter—I cant remember who it was, killed a big turkey up there—that it was the biggest one he ever killed in his life, and the creek took its name from that.

Contesting defendants move to strike out the question and answer.

Q. Did you learn who gave the name to the creek?

A. No sir I *dident* learn that or *dident* learn who killed the turkey.

Q. When did you first learn about this naming of the creek?

A. That was away back when I was young, before I was grown that I first learned about it—I was a young man.

Counsel for contesting defendants object to each and all of the foregoing questions and answers and move to strike out each and all of the answers made there to by the witness.

CROSS EXAMINATION: None.

And further this deponent saith not.

CONLEY BLANKENSHIP.

Witness claims 1 day and 26 miles travel.

page 50.] It is ordered that these proceedings be adjourned until Thursday, July 10th, 1902, to meet on said

day at 10 o'clock, A. M., at the office of the Commissioner, in the city *og* Huntington, Cabell County, *west* Virginia.

J. T. GRAHAM,
Commissioner.

Met at the office of the Commissioner, in the city of Huntington Cabell County, West Virginia, this the 10th, day of July 1902, pursuant to adjournment on the 5th. inst.

Present: The same attorneys as heretofore.

GEORGE HATFIELD, a witness introduced in behalf of the defendant Henry C. King, after being first duly sworn upon oath testified as follows:

EXAMINATION

By Judge Stiles.

Q. State your age residence, and occupation?

A. Age 58 years, residence Huntington, West Virginia, occupation shoe-maker, I was formerly a carpenter.

Q. Did you ever live in Logan County and if so when and how long?

A. Yes sir, I lived there about fourteen years when I was small—when I was a boy?

Q. At about what age were you when you left there?

A. I was about fourteen.

Q. Where did you live after that?

A. In McDowell County.

Q. Who was your father?

A. Andrew Hatfield.

Q. Are you acquainted with Thacker Creek now in Mingo County which empties into Tug River below Beech Creek? If so how long have you known it?

A. I *havent* known it only by what I have heard.

Q. Have you been in the neighborhood of that creek at any time?

A. Nothing only when passing up and do[wn] page 51.] the railroad.

Q. When you were living in Logan County

were you acquainted with the people of that county, especially those living in the neighborhood of Thacker Creek?

A. I was acquainted with some of them.

Q. You may state whether during that time you learned or heard among those people whether or not Thacker Creek had formerly *born* another and different name or was reputed to have done so and if what that name was or was reputed to be?

Objected to by contesting defendants.

A. Why heard one man say that it had another name.

Q. You may state what he said and the circumstances *atending* it?

Objected to by the contesting defendants.

A. It was a fellow by the name of *Valentime* Hatfield, he had been at my fathers and me and my brothers went a part of the way with him and when we got on top of the hill he wanted me to go on home with him, from there, I think that I asked him something about where he lived and he was a showing the different creeks and their names and he said over there was Thackers Creek that used to be called Turkey Creek.

Q. Did he point out or mention any other creeks in that neighborhood

A. Yes sir.

Q. What ones?

A. Beech Creek and Mate Creek.

Q. Where were you and he at this time—when he indicated these creeks?

A. On top of the hill on the fork ridge of Ben Creek—we were standing on top of a big rock.

Q. From that position could you over look a good deal of the country?

A. Well I *couldent* tell. He was a pointing and showing as near as he could where his fathers house was.

Q. Where did his father live at that time?

A. He lived on Mate Creek.

Q. And where did you live at that time?

A. On Ben Creek.

page 52.] Q. Is Valentine Hatfield now living?

A. No sir I think he is dead.

Q. Do you know who was his father?

A. Ehpraham Hatfield—he claimed to be.

Q. Do you know how long Valentine had *liged* on Mate creek and in that neighborhood?

A He was raised there on Mate Creek.

Contesting defendants here move to strike out each and all of the foregoing answers of the witness.

CROSS-EXAMINATION.

By Mr. Shepard.

Q. Please locate the point where Valentine Hatfield made the *stat4ment* to you?

A. We was on top of the hill—its the fork ridge of Ben Creek—we was standing there on top of a big flat rock.

Q. Do you mean the ridge between the right and left forks of Ben Creek?

A. Yes sir.

Q. How long is that ridge?

A. I *couldent* tell.

Q. Give an estimate of the length of it?

A. I expect it is some six or eight miles—the ridge.

Q. Now tell me what place along that ridge you were?

A. It was on the top of the ridge—*thare* was a road went through from my fathers from Ben Creek to Beech Creek, Valentine had to go that way to go home and from Beech Creek to Mate Creek.

Q. Where did your father live?

A. My *fiather* lived on the right hand fork of Ben Creek in a big log house about a mile from the Twisted Gun Gap.

Q. Then the road you speak of led across the fork ridge

and came out to the left hand fork of Ben Creek where Andy Toler now lives?

A. That road came out a mile or two above page 53.] where Andy Toler now lives.

Q. Describe the course you and *Volentine* went from your fathers house to where the road reached the top of the hill?

A. Well we went up Ben Creek about a mile and a quarter and up the Bill Rife Fork to the top of the ridge and that is as far as I went

Q. Was that the road-way at *them* time.

A. Yes sir.

Q. Do you undertake to say now that you could see Thacker Creek from that point?

A. I *dident* say that, I said that he was a *pointijg* out the creeks and said that that one down there was Thacker and used to be called Turkey.

Q. Did you see Thacker Creek from that point when he mentioned it?

A. It runs in my mind I could see the hills that he said was the further side of Thacker—the peaks that run up—knobs.

Q. Are you willing to state as a fact that you did see and identify the Thacker mountain?

A. Nothing more than what he said.

Q. As a matter of fact you saw no creek at all from that point did you?

A. Yes sir. I saw some creeks that he pointed out. He showed us where he would have to cross the further side of the left hand fork of Ben Creek.

Q. How many miles were you then from Thacker Creek?

A. I *couldent* tell you.

Q. The Norfolk & Western Railroad was completed *throgh* there in 1891 was it not?

A. Some time about there, I wont be positive page 54.] about it

Q. Name the creeks you saw which were pointed out to you by Valentine Hatfield? at the time you speak of?

A. I could see the left hand fork of Ben Creek and he showed me a knob that run up and said that was beech creek or *beeck knob*, and then there was Mate—he said that was the head of Mate Creek where he would have to go over the ridge to the left of the knob to go home

Q. Did you see Mate Creek?

A. No sir I *dident*.

Q. Did you see Beech Creek?

A. No sir.

Q. Did you see *Thcker* Creek?

A. No sir I *dident* see any of the creeks only what he *represnted* I saw the hills and knobs that he pointed out I *dident* see down into the creeks.

Q. Did you ever go over the route that was then pointed out to you?

A. I went from my Fathers to the mouth of Mate Creek.

Q. Then you know as a fact that Mate Creek, Beech Creek and especially Thacker Creek cannot be seen from the point where you and Valentine Hatfield were?

A. I dont know whether they could or not. He pointed out the hills and mountains and the range of the hills where he said the creeks were.

RE-EXAMINED.

By Judge Stiles.

Q. About how long ago did this conversation occur?

A. I *couldent* tell you exactly; some forty three or four years ago.

And further this deponent saith not.

GEORGE HATFIELD.

Witness claims 1 day and 2 miles.

Resumed the taking of testimony for the defendant
page 55.] King, at the mouth of Buffalo Creek Logan County,
West Virginia, this the 18th day of July 1902, pursuant to agreement. Present counsel for the contesting defendant and judge Stiles for the defendant H. C. King.

RHODES D. TRENT, a witness introduced by the defendant H. C. King after being first duly sworn upon oath testifies as follows:

EXAMINED

By Judge Stiles.

Q. State your age, residence and occupation?

A. Age 58 years, I live on the head of Staffords Branch in Mingo County a mile and a half from the mouth of Gilbert Creek, and am by occupation a farmer.

Q. How long have you lived in Mingo County and in what was or is Logan County?

A. I was born in Logan County and have lived in the county principally all my life, I have lived out of the county though in other counties; I have been in Mingo County over two years.

Q. In what portion of Logan County have you lived principally?

A. In the upper end of the county principally in the neighborhood of Huff and Elk Creek.

Q. Have you been in years past acquainted with the people particularly the older people living in Logan County?

A. Yes sir I have.

Q. State whether or not prior to the institution of this suit you knew of any reputation or tradition in the neighborhood you *you* mention of there having been a change in the names of creeks in that County (Logan)?

Objected to by the contesting defendants.

A. Yes sir I have heard of the names of the creeks being changed.

Q. Mention some of the creeks that were reputed to have *born* names different from the names by which they are now known.

A. Well I have heard of Gilbert Creek being changed and
Huffs Creek Buffalo and Elk, and I have heard it
page 56.] talked that they were changed along both rivers.

Q. Did you hear of any of the former names of the creeks you have mentioned?

A. I heard that Gilbert was first called Kettle Creek and then it was changed from Kettle to War Creek and then it was changed from War Creek to Gilbert Creek. I have heard it talked that Buffalo Creek was at one time called Elk Creek—that is this Buffalo down here. I dont remember as I recollect what name Huffs Creek was changed from; but I recollect a creek on Sandy which I have heard was changed—this creek they call Thacker Creek was I have heard that this creek was changed from Turkey to Thacker. My information is *whaen* it was changed from Turkey Creek to Thacker it was changed to take the name of this Turkey Creek that this survey calls for. There is a creek in this country some place that my information is was called Turkey Creek well now my information is that the name of that creek was *give* to this creek that they call Turkey Creek now. They give it the name of Turkey before it was called Thacker.

Q. Did you learn from what Thacker Creek took the name Thacker and how it came to be called Thacker?

A. Well my information about that is that a man moved to that creek and built a mill there called Thacker, and it took its name from his moving there and living there.

Q. Did you learn what his first name was?

A. Ruben Thacker.

Q. Did you ever hear in the manner I have stated from the old people any reputation or tradition that Island Creek was at one time known by a different name.

Objected to by contesting defendants.

A. I have heard it was called Gilbert Creek.

Q. You may state, if you remember, from whom you heard that and at what time?

A. It has been a good long time ago since I heard it and Doctor Hinchman is the man that told me that it was his idea that it was one day called Gilbert Creek.

page 57.] Q. Who was Doctor Hinchman and what was his occupation?

A. He was a doctor and a surveyor both.

Q. Is he now living?

Q. What official position, if any, did you hold in 1900 and thereabouts?

A. Sheriff of Logan County.

Q. Did you serve the subpoena upon the parties mentioned in the fifth amended bill in this cause or upon any of them?

A. Yes sir I served them and had them served.

Q. Who if any one paid you your fees for serving such process?

A. Mr. C. W. Campbell paid me I think, as well as I remember.

Q. How was the payment made?

A Made by checks.

Q. In whose name or by whom were the checks drawn

A. I think one of the checks Mr. C. W. Campbell himself and the other one as well as I remember was in Stuart Wood's name. It was Stuart Wood's check.

Q. Did these payments cover all the services you made or how many?

A. Near about all—there was a small balance.

CROSS-EXAMINED

By Mr. Campbell.

Q. What were the parties who advanced the money to pay for your services to have for advancing the money for the State.

Objected to by defendant King.

A. I refused to serve the process unless *thse* gentlemen would pay and we then made the arrangment—I was to serve the process for 50c each instead of 75c and was to assign over to these gentlemen my fee bills for them to get the money out of the State.

page 60.]

The contesting defendants move to strike out all the evidence of this witness because same is immaterial.

And further this doponeth saith not.

J. R. HENDERSON.

Witness claims **1 day and 8 miles.**

By agreement these proceedings were continued to the city of Huntington, West *Virgini*, and in pursuance of which the parties by their attorneys—met at

page 61.]

the office of the Commissioner in said city this the 23rd. day of July, 1902, and the proceedings were then resumed.

NOAH BURCHFIELD, a witness introduced by the defendant H. C. King, after being first duly sworn upon oath testified as follows:

EXAMINED

By Judge Stiles.

Q. State your age, residence and occupation?

A. I will be 77 years old on the 6th. day of next November, I now live in Greenbrier County, West Virginia, on what is called the Coal Knob farm, and am a farmer.

Q. Did you ever live in the neighborhood of Tug River, if so and how long?

A. Yes sir. With the exception of about seven years I have lived on it ever since 1845. I moved away from there seven years ago. I had moved away from there at different times but *dident* stay away more than a year at a time.

Q. What part of Tug River Country have you lived in?

A. The last I lived on it up at the mouth of Little Indian. I lived on it for several years on the Dry Fork just above Iaeger.

Q. Have you in times past been acquainted with the Tug River Country, down in the neighborhood of Turkey Creek and with Turkey Creek that comes into the River, some distance above Ben Creek.

A. Yes sir.

Q. When did you first become acquainted with the neighborhood of Turkey Creek?

A. It was in 1844—the first time I ever went up, Tug River there.

Q. Have you been acquainted with it ever since?

A. O yes I *havent* lived right at it; I have been there often. I never lived more than above twelve miles from it until I moved. I was once before away from it and out of the county but not over a year. That was before I moved to where I

page 62.] now live.

Q. Were you acquainted with the people living in

the neighborhood of Turkey Creek in the early days of your *acquaintence* particularly with the old settlers?

A. Yes sir I knowed *ever* one from away below the mouth of Ben Creek up to the mouth of Dry Fork—every family.

Q. Are those people now living—that is I mean the old people?

A. I don't think they *is*. I don't know of *nara* a one living that lived there when I first went to that country.

Q. State whether or not you know how Turkey Creek was reputed among the old settlers in that neighborhood to have received the name—Turkey Creek?

A. Well sir the old Baileys there—Harve Bailey, Eli Bailey and Gordon Bailey, told me that it got its name from Eli Bailey killing a turkey there.

Q. Was there any thing particular about the turkey?

A. They said it was the *tremendouses* largest one they ever saw and fattest. They roasted it there and eat it at the forks of the creek up there.

Q. Did you ever hear any one else speak of how the creek got its name?

A. Yes sir.

Q. Who else if you remember?

A. Old Tommy Lester told me so and old Abner Lester told me so they was brothers and old Jacky Reed told me so—John W. Reed was the way he always wrote his name. A heap of them has told me that in talking with them—old Presley Blankenship and old Isom Blankenship has told me about it. You know we had to go there eighteen and twenty miles to get hands to help roll our logs up.

Q. How many families were living along the river in the neighborhood of Turkey Creek at the time you heard how it acquired its name?

A. I *hear* of this story in 1844 and I can't tell how many *time*

afterwards because I was living right along with them. Old Billy Collins was the first man that ever told me about it page 63.]—he was living opposite the mouth of Ben Creek, and I stayed over night when I first came into that country, with him, I came across from Knox down Bull Creek to the river and to old Billy's house.

Q. Who was the next man? And where did he live.

A. Tom Mullins lived up on the river above Bill Collins a mile and a half; Old Mike Cline lived at the mouth of a little Branch below the mouth of Panther; Eli Bailey lived a little below the mouth of Turkey Creek, he was not an old man then; Tom Lester lived next about half a mile up Panther Creek; *Onother* Mike Cline—that ones son, lived at the mouth of Nigger Branch; The next one was Maston Christian living between the forks of the river; that is where Iaeger is now; The next one was Samuel Lambert living at the mouth of Sandy Huff Creek; On the Dry Fork old Jacky Reed lived five miles up it; the next man was ten miles up the Dry Fork his name was Wash Paine.

Q. How old a man was Eli Bailey at the time you first knew him?

A. I think about forty of forty five years old

Q. Were you ever down in the neighborhood of Thacker Creek?

A. Yes sir I have canoed goods up *thae* river down there for a man by the name of Eliott Rutherford.

Q. Did you ever know of a man by the name of Thacker that lived at Thacker Creek?

A. Yes sir I knowed the man that lived down there at Thacker Creek—Ruben Thacker was his name—that is what they called him.

Q. What was his business?

A. I cant tell you that for the living *wasent* much for there was just about two acres of cleared ground and a little mill probably to do his own grinding. I never was at his house but once or twice—that is to be right in his house.

Q. Are any of the people that you have mentioned, as having told you how Turkey Creek got its name, now living.

A. None of them that told me them times *haint* living—*nara* a one.

Q. Did you ever know a surveyor of the name
page 64.] Henry B. Harmon who used to live in Tazewell County?

A. Yes sir.

Q. Did you ever do any surveying with him or assist him about surveying?

A. Yes sir I have carried chains for him.

Q. When was the first work you did for him?

A. In running these big survey lines was in 1852.

Q. Where did you run at that time?

A. The first I ever run on a big survey line was from the top of the Indian Ridge, from the five chestnuts. We run back from there a crossing the Dry Fork—we crossed Tug Fork and Dry Fork both, *uot* to the head of Bradshaw on the dividing ridge—the dividing ridge there is between Bradshaw waters and Dismal and Dry fork.

Q. Then *were* did you go?

A. We run out to the top of the mountain near the head of Panther Creek.

Q. And where did you go from that point?

A. We went to Knox from there.

Q. At what point on Knox?

A. Near the forks of *of* Knox—at the mouth of a big fork any how. We went there to some oaks that was said to be corners.

Q. How many oaks?

A. Three was all I saw.

Q. Describe about where they were?

A. They was close the mouth of a small branch that run into Knox Creek—right near the mouth of the branch.

Q. Any one live near that place?

A. Yes sir a man by the name of Blankenship?

Q. How far from the head of Knox Creek if you know, did these trees stand?

A. I don't know but as well—the best I can guess at it, it was never measured as I know, never then, it was five or six miles from where the corner was said to stand up

page 65.] to the head of Knox Creek.

Q. Were those trees marked?

A. Yes sir.

Q. How were they marked—in what direction if you know and on how many sides?

A. The were marked on two sides. On the Southeast direction and the other we went in below the mark and that would have throwed it to the north east, bound to have been.

Q. Did Harmon examine the trees for marks, if you know?

A. Yes sir. There was three of us along besides Harmon and we all examined them.

Q. What direction did you run from there?

A. We run a west direction from there?

A. To what point or about what point?

A. We run away out near the head of Peter Creek.

Q. From there what direction did you run and where did you stop?

A. We run a north direction from there to Tug River and we run a north direction from there and across then to the head of Mate Creek from that we run over them to Pigeon Creek and on to Island Creek crossing Pigeon Creek on to Island Creek. Down the boundaries of Island Creek to the mouth or near the mouth; we was just on the spur at the mouth, right above the mouth of Island Creek, where we could look down into the town and there we wound up and quit, the river got up. That is as far as I went.

Q. At what place did you cross Tug River?

A. We run down to Tug River and near the mouth of a place they called Deep Gut or Steep Gut I don't know which.

Q. At about what place did you cross Pigeon Creek?

A. We crossed Pigeon Creek up about the forks a little above where the old man George Floyd lived.

Q. Were any of the lines that you ran marked—that is did you mark any trees along the line?

A. He marked some few—Harmon did.

Q. Do you know the beginning corner of the 500,-
page 66.] 000 acre survey which is also corner of 320,000 acre survey and the 480,000 acre survey and commonly called the "Muzzle Corner?"

A. I know where the corner is on Muzzle Creek or where it used to be. I don't know what surveys I have heard them talking about them but it is a large chestnut on the bank of Muzzle Creek—I have seen it many a time.

Q. Did you ever live near there.

A. I lived three miles—said to be three miles from it.

Q. Do you remember a splash dam on Muzzle Creek up above where Rife used to live, built probably by Joe Blankenship?

A. Yes sir.

Q. How far was this from the chestnut?

A. Just a little distance out up on a flat—the trees were up on a flat.

Q. Did you ever run any lines, or help run any lines from those trees, if so when and with whom?

A. Yes sir. I believe as well as I recollect it was in about the spring of 1854, with the same Henry B. Harmon.

Q. Where did you run that time?

A. We run out and crossed Tug River at the mouth of Nigger Branch near the mouth of it, we *corssed* the Georges Fork of Panther there.

Q. What direction did you go from there?

A. We went a west direction from there. We went from there to Knox Creek to them same corners—them oak corners that I was telling you about.

Q. Do you know what land he was running out or what line he was running?

A. I don't know whether it was the line between John Her-

mann and Bouvier. We run them both the John Harmann and Maitland and the Herman and Bouvier—it was the cross lines we were running I suppose making the divisions between the land of John Hermann and Bouvier.

Q. In marking the lines on these different sur-
page 67.] veys do you know what sort of an instrument was used?

A. Yes sir. A little small tomahawk—we always called them then about an inch and a half or an inch and three quarters wide on the blade.

Q. Whose was that tomahawk?

A. It was mine. Old Jackey Reed made it for me in the winter of 1844. I carried it for a number of years and used it as a hunting ax.

Q. Where is it now if you know?

A. It got washed away they said in Maggie Manns house when it was washed off on the Dry Fork a while back. I had given it to my grand son who had took it home to keep a while as they had frequently done.

Q. How long ago was that—or did this freshet occur?

A. I believe it was this last July a year ago.

Q. Do you remember how many marked trees there were standing at the Muzzle Corner when you were first there?

A. I *dident* see but the one big chestnut is all I ever seen there is all I have any recollection of.

Q. Do you remember on how many sides that was marked?

A. On two.

Q. Do you remember whether there was any other trees lying down close by or did you notice?

A. There was some lying down close by, if there was any marks on the loks we *couldent* find them;

Contesting defendants move to strike out all of the testimony of the witness.

CROSS-EXAMINATION.

By Mr. Campbell.

Q. When did you come to Huntington?

A. Tuesday morning—it was before day.

Q. Where have you been staying since you came to Huntington?

A. At the Adelphia Hotel.

Q. Did any one meet you when you arrived at the depot if so who?

A. No body that I knowed or that I had ever saw. I battled thro. here for over an hour and got with a police-
page 68.] man and he took me down to a hotel down there.

Q. Did the policeman take you to a different hotel than the one you are now at?

A. Yes sir.

Q. Who brought you up to the Adelphia Hotel?

A. I can't tell you that mans name for I never *axed* him.

Q. Have you met *met* any person in town while you were here and been introduced to them, if so what was *there* names?

A. Yes since I have been in town I have. I met Mr. Dixon and he told me that that was a good hotel to stay at out there. I had heard that he was a living some place here and I was a looking for him around he was all the man I suppose I would have knowed that was in the town.

Q. Where did you first meet Dixon before meeting him at Huntington?

A. Why I used to be acquainted with him on the Tug Fork.

Q. How did you happen to come to Huntington?

A. I was *ummoned* here—noticed to come here.

Q. When and by whom?

A. A letter was left at my house last Saturday and I got it last Saturday night. The *sommons* was in the letter and that is what caused me to come here. The letter was from M. F. Stiles.

Q. Have you had any conversation with Mr. Dixon since you have been in town?

A. Yes sir.

Q. What has he been talking about?

A. I was *axing* of him a great deal about my son-in-law Mr. Manns.

Q. Have you ever testified for Henry C. King before this?

A. No sir not in no suit in no way—I never have. They taken part of my depositions at one time at Iaeger but very little but I dont know that it was any thing concerning these lines.

Q. Who took it and what were you testifying about?

A. I was a telling of them and *giveing* of it in to them about this upper cross line thro to Knox from the five chestnuts on the Indian Ridge. There was Mr. Stiles was there, page 69.] I don't recollect who it was that was there.

Q. Who was asking the question of you?

A. Mr. Stiles *axed* me some questions and there was another lawyer and he was *axing* me questions I believe. He was from Logan or some wheres and they asked me the questions and I answered them and that is all I know about it.

Q. Has there been any surveying done in the last year or two on Knox Creek? to your knowledge or information?

A. Not that I know of sir.

Q. Did Mr. Dixon tell you anything about this case?

A. O no he *dident* tell me anything about it I *axed* him if he knowed what they wanted me to come here for.

Q. What did he tell you?

A. He said that he supposed that they wanted me to give evidence in this case this King case—he supposed so he *dident* say it was so.

Q. Did he talk to you about what had been sworn to in the case by other witnesses?

A. No sir not a word.

Q. Did Mr. Stiles talk to you *to* day before you came into the room?

A. We talked together some but nothing concerning about what I knowed about it—not a thing.

Q. Did you tell him what you knew?

A. No sir.

Q. Did you ever tell him, or Dixon or *W8lder* what you knew?

A. No sir I don't think I ever told them. They come to me once and *axed* me what I knew about it and I told them I *dident* know but very little about it, I helped run the survey but I *dident* want to have anything to say in it as I wanted to keep out of it.

Q. Have you had any conversation with Colonel Wilder since you have been in town about this case?

A. No sir.

page 70.] Q. How did they find out that you would swear?

A. I cant tell you that.

Q. Did Mr. Harmon or you mark any line trees between the Muzzle Corner and the three white oaks on Knox Creek?

A. I did not Mr. Harmon marked I think some few but not very many very few.

Q. At what point on the *lline* were these trees standing?

A. He generally marked one tree or two where he would cross a river or public road, well public roads were nothing then just a path.

Q. Did he mark any trees at the mouth of Nigger Branch?

A. I believe he did I believe he mark one on each side of the river there. He may not have marked any except on the north side of river as we had to cross in a canoe.

Q. Did he mark any as he crossed Panther Creek or any of its waters?

A. I believe that he did where we come down *of* the hill to its waters I believe he did may *by* on one side or on both sides of the creek.

Q. Is that the first time you were over that line?

A. Thats the first time.

Q. Was Harmon engaged at that time in dividing a boundary of land lying to the east and south of that line?

A. Yes, sir. He had I believe run one of them lines before for Maitland and John Hermann.

Q. Which line had he run before?

A. The upper line of it that crosses up thro *towrds* Perryville, crosses Bartley Creek?

Q. Had he run between the Muzzle Corner and the three white oaks before?

A. No he *hadent* run that line.

Q. What cross line did you help him run?

page 71.] A. I helped him run both of them.

Q. Describe where those lines lay?

A. One of them lays in the head of the Dry Fork country and it run across Bartley Creek and one of them run across near Ieager there but I dont know whether it is above or below.

Q. Into how maay parcels did you divide the boundary of land?

Objected to by defendant King.

A. I dont recollect of them dividing it into only three.

Q. Did you or Harmon mark any line trees on Island Creek and if so what kind of trees and where were they?

A. Not that I recollect of, they might some on that side of the river but I dont *know* recollect of. Where he stopped and turned back on Island Creek I think he marked about four, he just hacked two hacks on a tree and I believe he said that he wanted to mark the place as he expected to send his brother back to run the line across the river and he wanted to mark the place so he would know where to start from.

Q. Do you mean that Harmon marked some trees where he stopped or that he marked trees along the line from Peter Creek to where he stopped?

A. *O* no I mean that he marked the trees just where he stopped.

Q. Those were the only trees then that he marked on that running were they?

A. No sir he marked as I told you that when he crossed a river or creek he would generally mark a tree so people could see where he come across.

Q. What trees did he mark at Steep Gut?

A. I believe that the one on the north of the river where he come down was a sweet gum and on the other side of the river was a little bit of a poplar not more than ten inches through. I dont remember seeing him mark the sweet gum but there were sweet gums right there and I believe he marked one.

Q. What trees did you mark at the crossing of Mate Creek?

A. I dont recollect.

Q. Do you know that he marked any?

page 72.] A. I dont know for certain that he marked *ara* a one there.

Q. What trees if any did he mark, when he crossed Pigeon Creek and near whose house did they stand?

A. Right near George Floyds house was the nearest house and he marked a sugar tree that stood on the inside of the field—on the inside of the fence; we went right up by it and as we went by it he marked it.

Q. Did he mark any trees after leaving Pigeon Creek until he got to the end of his line near Logan Court House?

A. Yes sir he marked two—one on each side of the road that comes from old Ralph Steels—it was just a path, they were about a chain length apart.

Q. What course did Harmon run from the three white oaks towards Peter Creek?

A. Pretty near a west course, mighty nigh a west course.

Q. Did he run clear to Peter Creek?

A. No sir.

Q. Where did he turn?

A. At the head of a left hand fork of Peter Creek on the side of a high knob.

Q. What did he mark there?

A. I dont recollect what sort of trees he did mark there.

Q. Do you know that Harmon marked anything on the side of that Knob?

A. Not for certain I dont. He generally always where he turned he made two hacks on a tree with that little hatchet, he never made more than two hacks on a tree.

Q. He was then not marking any corners was he.

A. No sir he *dident* mark no corners.

Q. Did he change the bearing of his line at any point, between

where he turned on the side of that knob and where he stopped near the mouth of Island Creek.

page 73.] A. Yes sir.

Q. At what point?

A. Well I dont know that I can tell; he changed two or three times. I *canrot* tell where he did change at.

Q. What if anything did he mark at the point of these changes?

A. I dont recollect that he marked anything where he would make these changes.

Q. Do you know where old man Estep lived on the Race Fork of Knox Creek?

A. No sir I dont.

Q. Do you know where there was an improvement and a house standing on the right fork of the Race Fork towards the head of the stream?

A. There was one standing up there somewhere, a man by the name of Jack Breeding lived up there at that time.

Q. Now near did your line pass to that improvement?

A. I did not as I recollect of see any improvement there but recollect of them saying that Breeding lived there.

Q. Was that above or below your line?

A. It was above the line?

Q. Had Harmon run that line before?

A. Not that ever I knowed of.

Q. Did he tell you that he had?

A. No. sir that I recollect of.

Q. Do you know of any trees that he marked on that line?

A. No I *couldent* tell of any on that line—none that I could tell of he marked several as he did on other lines.

Q. How do you know that he marked several on that line?

A. Why I would give him the hatchet I carried it on my back, and when he would tell me he wanted to mark a tree if I was carrying the hind end of the chain I would fetch him the hatchet—

I generally carried the hind end of the chain. I carried the *hatcket* in my belt.

page 74.] Q. How many trees did he mark on that south boundary line?

A. Why I *couldent* tell you, he generally marked about three or four a day and when he crossed a large stream or path he marked one on each side.

Q. Can you tell where you crossed Race Fork of Knox Creek

A. No sir I cant not now; it was near where old Isom Blankenship lived close by. He had a little deadening and maybe a half an acre chopped off and a camp. I *couldent* tell how far up or down the creek it was.

Q. How close did you go to that camp and clearing?

A. I expect it was about two or three hundred yards above it between it and the Breeding camp.

Q. Was the Isom Blankenship camp above or below the forks of the Race Fork?

A. It was above and old Kiah's was below) Kiah Blankenship

Q. How far was Isom Blankenship above the forks?

A. As well as I recollect it was between a quarter and a half a mile maybe not so far as that and perhaps farther.

RE-EXAMINATION

By Judge Stiles.

Q. How long ago was it that your deposition was taken by me at Iaeger?

A. It has been about four or five years.

Q. You were examined at that time about this Harmon surveying and about Turkey Creek were you not?

A. Yes. sir.

Q. Was your deposition completed and signed at that time?

A. No sir I think not. I know they *wasent*.

Q. Did you know in what case your deposition was intended to be used?

A. No sir I *dident*.

Q. Do you know now in what case it was taken?

A. No sir.

page 75.] Q. Do you remember being summoned to go to Abingdon as a witness for Mr. King in September 1899?

A. Yes sir I recollect being summoned to go?

Q. Why did you not go at that time?

A. I *wasent* able to go I was lying under the doctor at that time.

Q. Do you remember Colonel Wilder and me coming to see you on Big Branch in Wyoming County about 1894 to enquire about the surveying you did with Harmon?

A. Yes sir I recollect it I met you on the branch and you were leaving.

Q. Where were you living at the time you did this work with Harmon?

A. I was living with Jack Reed—was making my home there.

Q. Who was with Harmon besides yourself when you ran from three white oaks west and then to Island Creek?

A. Ticy Harmon, Billy Harmon and Tom Burchfield my brother was along.

Q. Do you remember what time my letter requested you to be here to give your deposition in this case?

A. Monday of this week.

Q. Do you know whether I had some correspondence with one of your sons lately?

A. No sir not that I know of.

Q. When you ran the line with Harmon from the Muzzle Corner did you cross Tug River above or below the Negro Branch?

A. Right below down at the mouth of Little War below.

And further this deponent saith not.

his

NOAH x BURCHFIED.

mark

Witness claims 2 days and
430 miles.

Resumed the taking of these depositions at Hunt-
page 76.] ington, *W3st* Virginia, this the 18th. day of Au-
gust, by consent and agreement: Present C. W. Campbell attorney for the contesting defendants. M. F. Stiles, attorney for the defendant H. C. King.

W. C. REDDY, a witness introduced by the defendant H. C. King, after being first duly sworn upon oath testified as follows:—

Q. State your age, residence and occupation?

A. Age 32 years, residence Summersville, West Virginia, and by occupation a land surveyor.

Q. You are the same W. C. Reddy, who was appointed one of the surveyors in this case by an order of court are you?

A. Yes I was appointed in this case on the 5th. of August.

Q. State what surveying you have done under the order and when?

A. On the 9th. day of August as heretofore stated in my report, which has been filed with the commissioner, I commenced surveying on the Right Hand Fork of the Race Fork of Knox Creek in front of Dan Justice's house and at that time and the two days following I meandered the Race Fork of Knox Creek from the point where the south line of the plaintiffs survey is said to cross the same as located by W. D. Sell northward to a sulphur spring and also ran certain lines of a survey granted to R. D. Coleman containing 3645 acres and of two surveys containing 127 acres and 33 acres made for William Estep and also made certain other measurements between certain trees, as set forth in my report, as delineated on map accompanying same.

Q. Of the lines laid down on said map what ones did you run?

A. I meandered the creek as shown on the map and ran the heavy black lines on the same; also a line from a corner—

2 birches, White oak and hickory on the opposite side of the creek from Dan Justices house north-westward to
page 77.] a point designated on said map with a circle and a cross and marked "lynr stump." I also took measurements from certain trees to certain other trees as shown on said map in plats 2 and 3.

Q What do the lines marked "call S 49-1/2 W. 145 po" and the line run at about right angles with the same passing Dan Justices, represent?

A. These are two lines of the Coleman Survey of 3645 acres and of a survey of 800 acres made for A. J. Mays, which joins the same. I ran these lines from the gum and dogwood shown by Rece Davis and situated near the head of a hollow running into the creek at the sulphur spring and ran on the call of the two tracts named, south 49-1/2 west 145 poles, surface measure. This distance terminated in Dan Justices' turnip patch, the call being for a triple lynn; nothing was found here. The next line runs to a white oak, two birches and ash and a hickory on the south side of the Race Fork, about fifteen yards from the same on a small rocky flat. The call in the Coleman tract on this line is south 56-1/2 east 56 poles; the call in the May tract is south 50-1/2 east 56 poles; the lines as I found it from the point in the turnip patch to said last named corner is south 41 east 1085 feet or 65-2/3 poles.

Q. Did you find the trees or any of them at the corner marked as two birches, white oak and hickory?

A. There was a hickory standing at this point, two birch stumps a fallen white oak and several other trees, marked as corners and pointers.

Q. Were they marked as corners and pointers for the line you ran to them?

A. They were marked on the north-west side and the south-west side. The line I ran to them ran in from the north-west.

Q. Did you run the line corresponding to the marks on the south-west side?

A. I did. This line and the next to the south-ward were run from the point marked "Poplar" on the Hurricane Fork, on the calls of the Coleman grant reversed, as set forth in my report.

[page 78.]

Q. The call in the Coleman grant, south 49-1/2 west 145 poles is up the left hand side of a spur crossing hollows and spurs, did the line you ran conform to that description?

A. It did.

Q. To what stumps or trees, if any, did you run lines and make measurements in the drain or hollow at Dan Justices house, and what were those measurements?

A. I had first commenced my surveying as before referred to at a peg near Dan Justice's gate on the creek bank, from this peg I took measurements up the hollow at Dan Justice's, north 31-3/4 west 120 feet, at which point I was 62-1/2 feet to the right of the south east corner of Dan Justice's house; I continued this line in the same direction a total of 508-4/10 feet to a large poplar stump, known as the lower poplar stump—or number one, which was said by Messrs. Campbell and Shepard, who were present, to be the stump of one of the poplar trees, called for in the 500,000 acre Morris grant in the three poplar and sugar corner on a small branch of Knox Creek. From this stump, I took the following measurements:—south 71 west 57-1/10 feet to a poplar stump known as the upper poplar—or number two; south 52-1/4 west 33-7/10 feet to a point where a sugar is claimed to have stood—one of the trees of said corner, same direction 35 feet to a large lynn stump; south 52-1/2 west 19-6/10 feet to a beech stump; south 26-3/4 east to point where a poplar is claimed to have stood by said Campbell and Shepard and said by them to be one of the trees of said three poplar and sugar corner; South 20 east 38 feet to a beech stump; south 38 east 90-8/10 feet to a beech stump, shown by J. A. Shepard as a line tree on the south line of said 500,000 acre survey, running into this corner; North 20 east 6-7/10 feet to a gum stump; north

3 west 43-8/10 feet to a sugar stump; north 12 east 31-2/10 feet to a beech stump; all of these stumps stand on a hill side in a clearing made by Daniel, Justice, on a bank of a small drain which flows into the Race Fork, at his house.

[page 79.]

Q. These last measurements, I understand all radiate from the point marked poplar number one on your plat number two.

A. Yes sir.

Q. Will you indicate in figures on plat number two the distances between the several stumps that you have there represented stating it as approximately as practicable.

A. I will indicate it on the map filed with the commissioner.

Q. How does the line that you ran south-east to the two birches, white oak and hickory—the line of the Coleman tract, run with reference to the stumps that the contesting defendants claim to be the south-west corner of the Morris grant, at "S."

A. It runs through the center of the group.

Q. How near does that line pass to the point where they claim a sugar tree stood?

A. About two feet to the west.

Q. How near the lynn stump by the sugar tree?

A It passes through the eastern edge of the lynn stump.

Q. That leaves the poplar stumps one on each side of that line does it not?

A. It does.

Q. Would it in your opinion be possible, using that word in ordinary sense, for a surveyor or any other person to run that line and not observe the sugar tree if there was one and the poplars and to notice that they were marked, if they were marked?

Objected to by the contesting defendants.

A. I think it would be almost impossible for any one running this line to fail to note these trees if they had been marked.

Q. You did not find at the end of that line, or the preceding one the triple lynn called for or any other lynn, page 80.] but you found a lynn stump a short distance to the west; if you had made that the terminus of the 145 pole line and had *ruj* from there to the next corner opposite the mouth of the drain would that line have still passed through the immediate neighborhood of the stumps at "S."

A. That line would have passed about 150 feet to the west of the center of the group of stumps at "S."

Q. It would pass considerably nearer than that to one of the poplars would it not?

A. It would pass about 120 feet to the west of poplar number two.

Q. Did you look over the ground in the neighborhood of the stumps at "S" and between the point marked lynn stump north-west of there and the mouth of the hollow?

A. Yes I went over it.

Q. Would it be likely or probable that any one running a line between that point and the corner opposite the mouth of the drain would fail to notice the trees at "S" if they had been marked?

A. I think not.

Q. What is the length of the hollow some times spoken of as a small drain at Dan Justices house and on which the point "S" is located?

A. It is about 1100 feet from the mouth of this drain to the forks and is perhaps half as far again from the forks up to the top of the mountain. The total length of the hollow would be about 1700 feet.

Q. You have represented it on the map by a blue line in the manner streams are usually indicated, state whether it is a flowing stream for the distance here laid down, or whether there is any and if so how much water running into the same, describe the hollow?

A. This hollow is what is generally known as a wet weather

branch. It is steep and the banks come down to it steeply on each side. About 150 feet from the mouth Dan Justice has dug a hole for a spring in which there is some water, above that point I did not see any.

page 81.] Q. Continue your description of the hollow and locality?

A. Dan Justices house stands on the left of the hollow about fifty or sixty feet west of this spring. On the right of the hollow as *yo8* go up and between it and the Race Fork is a small hill some thirty feet high and comparatively flat on top on which Dan Justice has a garden. Above this house and garden the left hand side of the hollow is cleared nearly to the top of the hill and is now in corn; several other crops appear to have been raised here. The stumps at the point "S" are surrounded by growing corn.

Q. Does there appear to be or ever have been a trail or passage way up that drain and across to the waters of Paw Paw?

A. No the trail from Race Fork to Paw Paw, goes up a branch called the Low Gap branch, which is the next branch above Dan Justices house on the same side of the creek, which comes in 1150 feet above Dan Justice's gate.

Q You find drains coming in to the Race Fork and its various branch at intervals of a few hundred feet throughout tis length do you?

A. Yes there are many drains coming into it—some of which are noted on the map; others of which I saw but did not take the measurements of them. All of those between the sulphur spring and the *the* Sell line of the 500,000 acre tract I located on the map.

Q. Upon what small tract of land does Dan Justice's house stand?

A. It stands on a tract of 800 acres surveyed for A. J. May.

Q. Did you have or see the calls of that tract?

A. I did—Mr. Shepard had them with him and showed them to me.

Q. Does that tract come down to the creek at any other point than right where Dan Justices house stands?

A. No it does not.

Q. Is there any place on that tract where he could locate and be near the Race Fork except in the immediate locality of his present location?

page 82.] A. No sir.

Q. What is the situation and character of the knoll you have spoken of, opposite his house and between the drain and the Race Fork, as to its being a natural or suitable camping place?

A. This little hill rises abruptly from the creek and from the hollow at least thirty feet. I should not consider it a good camping place, being difficult to reach and some distance from water.

Q. Some of the witnesses, who have testified in this case, have spoken of seeing near a branch, or drain, of the Race Fork a poplar tree marked as a corner on the north and east sides and a beech standing near by marked as a side line, did you find any *sich* timber in the neighborhood where you did the surveying as aforesaid and if so state where and what you found?

A. At 1065 feet above the mouth of the Low Gap branch before mentioned a branch comes in to the Race Fork on the opposite side of the creek from the Low Gap branch which is known as the Hurricane branch or fork, 190 feet up this branch on the left hand side and 22 feet from the branch on the foot of the hill there stands a good sized poplar marked as a corner on three sides; one mark pointing north 13-1/2 west; another marked pointing south 65-1/2 east and on the third side pointing south 18 west, this is the corner to the R. D. Coleman grant and of 127 acres granted to William Estep and is on the line of a 33 acre tract also granted to William Estep.

Q. What other timber stands in the immediate neighborhood of that poplar corner?

A. From this poplar corner I took the following measurements:—30-4/10 feet to a beech which was not marked; 21-7/10 feet to a beech which appeared to be marked as a side line but the upper mark of which might have been a knot; 55 feet to a large poplar marked with two hacks as a side line; 72 feet to another large poplar also marked as a side line; 18 feet to a maple which was not marked. This poplar corner is 5-4/10 feet in circumference.

page 83.]

Q. Did that poplar corner appear to be marked in the direction or approximate direction of the sulphur spring?

A. It was marked on the north side and one standing at that point would perhaps consider it as pointing in the direction of the sulphur spring, although the sulphur spring *it* a little more to the north east.

Q. Can you see the sulphur spring from that point?

A. No a high hill intervenes.

Q. About what is the distance of that poplar corner from the mouth of Dan Justice's hollow?

A. With the meanders of the creek it is 2400 feet or, *or* about 145 poles.

Q. Did you observe in the neighborhood of that poplar corner any natural camping grounds, or place suitable for a camp?

A. At the mouth of this Hurricane branch there is a little bottom comprising, perhaps a quarter of an acre, which would make a suitable camping ground and 577 feet further up the Race fork there was pointed out to me a place which was said to have been a regular camping place for *sang* hunters on that creek.

Contesting *defendats* object to the statement of the witness as to what was told him about *sang* camp, because the same is hearsay.

The defendant King consents that the same may be stricken out.

Q. Did you see any evidence on the ground that would indicate the place had been used as a *sang* camp?

A. I don't think I did at this particular spot about 100 yards above I saw a *sang* camp recently constructed.

Q. Did the poplar corner and the other marked trees in the neighborhood of it stand in such position that they would likely be seen by any one passing up and down the creek or branch or fork?

page 84.] A. Any person passing up or down the Hurricane Fork would pass directly by the two poplars marked as side line and within some 25 feet of the poplar corner.

Q. What is width of the branch in the neighborhood of that poplar corner and other trees, is it such that a person could step across the branch?

A. The branch itself is some four or five feet wide. There is some little bottom or slope on each side of it particularly on the right hand side of it as you go up.

Q. How is it with the drain at Dan Justices house in the neighborhood of points "S?"

A. Right at Dan's house and a short distance above there is a small amount of level ground but close to the point "S" the hill sides are steep and the drain is very narrow.

Not having completed taking these depositions proceedings are adjourned until tomorrow at same place.

J. T. GRAHAM,
Commissioner.

Resumed taking deposition of W. C. Reddy pursuant to adjournment on yesterday.

Present: Same attorneys as on yesterday.

Thereupon Judge Stiles proceeded with the examination of the witness W. C. Reddy as follows:—

Q. How long have you been engaged in land surveying and what experience have you had in retracing old land lines and examining corner trees and other marked trees?

A. I have been surveying lands in this state for eleven years. My work has consisted *alomost* entirely of retracing old land lines. In retracing such lines I have had a great deal of experience with locating and examining old corner trees and line trees. I was appointed one of the official sur-
page 85.] veyors for the United States Circuit Court, at Charleston, in 1894 and since that time in that capacity I have surveyed lands in the counties of Nicholas, Clay, Fayette, Kanawha, Boone, Lincoln, and McDowell, also did some in Roane and Jackson and Logan and Mingo.

Q. Did you examine any of the stumps on the Dan Justice drain of Race Fork that are claimed by the contesting defendants to be the south-west corner of the Morris grant, to ascertain whether they bore any marks indicating corner trees and if so whether you found any such indications?

A. The points claimed as the sugar tree and poplar number three, were simply depressions in the ground and of course the stumps could not be examined. The two poplar stumps were about three feet and a half high and too close to the ground to have any marks visable. If they had contained marks the same had evidently been chopped out in cutting down the tree or had remained in the logs above that part of the stumps now

Q. Did you examine for marks the poplar log *lyning* in the drain 55 feet from poplar stump number one, and if so did you find any?

A. I examined it but found no marks on it.

Q. Did you find anything near the lynn stump that would indicate that a sugar tree had stood close to the same?

A. 2 feet on the north-east side of the lynn stump. I was shown a depression in the ground which contained a peck or more of chunks of sugar tree roots in pieces about double the size of my fist. There were no remains on any sugar tree stump other than this above the ground. I examined the ground with my hands—the dirt being loose as if from recent digging, but found nothing to indicate a sugar tree stump.

Q. Did the roots you speak of appear to be attached to anything?

A. They did not. They were entirely loose and broken up into small chunks.

page 86.] Q. At the depression where the contesting defendants claim that a poplar tree had some time stood, did you find anything that would indicate, or that satisfied you what kind of a tree stood there, if any ever stood there?

A. *Sever* loose poplar roots lay on the ground; none were attached to anything. This *depresion* stands in the corn patch and has evidently been worked over in cultivation. Some tree perhaps stood at this point but as to its nature I can say nothing definite. The poplar roots mentioned were fully exposed and may or may not, have come from this place.

Q. You have spoken of a beech stump pointed out to you by Mr. Shepard as a line tree of this alleged corner and have represented said stump on your plat number Two, if that was a line tree could it have been a line tree of any lines of the Morris grant as the lines for the same are claimed by either defendant King or by the contesting defendants, to run?

A. It stands some distance south of a line from the point "S" to the 4 white oak corner of the Morris grant and three quarters of a mile north of the line claimed by King running to said 4 white oaks corner. I do not think it could have been intended for a line tree on either of these lines.

Q. How would it answer for a line tree for a line running north or north 37 east from the alleged corner "S"—the other lines claimed to run from the south-west corner of the grant?

A. It would not do for that line at all.

Q. Did you find anything in the relative positions of the poplar stumps and alleged sugar tree stump at "S" with reference to each other and to other trees standing near by that is inconsistent with the said poplar and alleged sugar tree, having been marked or made the original corner of the Mor-

ris grant or of any tract of land, if so in what does such inconsistency consist?

Objected to by the contesting defendants.

page 87.] A. The two poplar stumps are 57 feet apart; between them and a little to the south stands a beech and lynn stump—the lynn within two feet of the claimed sugar stump; both beech and lynn appear to be very old and are about gone. Indications are that these trees would have been about the same size and age as the two poplars. If the two poplars were marked for a corner it is more than probable that the beech and lynn as well as the claimed sugar would also have been marked. The distance of 57 feet between the two poplars with other timber standing close is unusual and I have never seen any such arrangement of trees so marked as a corner.

Q. The line of the Morris grant from the 4 white oaks as run by Stone approaches the point "S" from the east—any line that would approach from the south east corner to the point "S" would come from the east and would first reach either poplar stump No. 1 or the depression claimed to be poplar stump No. 3 or the alleged sugar tree stump of the four points claimed to mark the location of the corner trees at "S," if such line reached poplar stump No. 1 what trees in connection with that one would naturally be marked by a surveyor as corner trees?

Objected to by the contesting defendants.

A. The trees standing *closes* to this point would be the ones most likely marked in connection with it—say the beech 10-6/10 feet away, and the poplar No. 3 16 feet away; there is also a gum 6-7/10 feet away—this gum however is only half the size of the poplar No. 1 in diameter—the gum is 15 inches in diameter and the poplar is 35 inches and if old enough to reach the date of the patent would have been small and possibly not marked although very likely to have been.

Q. Poplar No. 1 would have stood in the middle of such a group would it not?

A. Very nearly so.

Q. Is the gum a tree of slow or rapid growth?

page 88.] A. Gums are of slow growth. I have never seen any over 24 inches in diameter inside of the bark.

Q. To mark the *allege* sugar tree about 34 feet away from poplar No. 1, the marker would have been obliged to pass around the beech about 19-1/2 feet away on a line between the two in order to reach the sugar would he not?

A. He would.

Q. And go only two feet further to reach the lynn.

A. He would.

Q. Your measurement of distance between the lynn stump and point claimed to be a sugar tree stump. I *undestand* was from center to center, about what would have been the distance between the trees measured on their adjacent sides?

A. The lynn stum is very old about gone. The place where the sugar roots were found was right against the lynn stump. I am unable to state where the center of a sugar tree would have been but judging from the location of these roots the two trees must have grown practically out of the same stump, or so close together as to have touched one another.

Q. If a sugar tree grew at the point claimed by contesting defendants and the line from the 4 white oaks had run to that tree so that it would be marked by the surveyor what other trees would be naturally marked in conjunction with that?

Objected to by contesting defendants.

A. The lynn close to the sugar—the beech 14-1/10 feet away and possible poplar No. 2—25 feet away.

Q. What surveying have you done and what inspection of the ground have you made in connection with the Morris 500,000 acre grant aside from the work done during the current month and where and under what circumstances?

A. I think it was the early Spring or along in January

1895, or at any rate close to that time, that I was appointed to make a survey jointly with W. D. Sell, in the eject-
page 89.] ment case of King against Blankenship, then pending in the Federal Court, at Parkersburg. In the surveying which followed Mr. Sell did the *compas* work and I accompanied him a large part of the time. I afterward did some running myself unaccompanied by him. During the time of the survey I visited all the points in controversy was up and down the Guyandotte River, up and down the Tug River—a large part of Knox Creek; up and down Panther Creek, Long Branch, Ben Creek, Turkey Creek, Gilbert Creek, Little Huffs Creek and Muzzle Creek, Cub Creek, Elk Creek, Peter Huffs Creek, Buffalo Creek, part of Rum Creek and part of Island Creek—in fact I went almost entirely over the land in controversy and visited the corners at "A" and "P"—the corner claimed at the mouth of Cub Creek on Guyandotte River and mouth of Turkey Creek and the mouth of Gilberts Creek and other points?

Q. Did you run or go over the lines from "P" to "H" on Stone's map or any line west-ward from the 4 white oaks?

A. I did not go over that ground along the line. I have, however, been down Knox Creek as far as the mouth of Race Fork and up the Race Fork to point "S." I did not go with Sell in running the line from "P" to "H" nor have I been along the line from "P" to "S."

Q. There is testimony in this case to the effect that the white oaks at the south-east corner of the King tract were marked on the north-east and south-east sides corresponding to lines of the 320,000 acre tract but were not marked on the west side, what would the absence of marks on the west side of those trees, call for as a corner of the 500,000 acre grant, indicate, as to whether any line had been surveyed therefrom to the west-ward as the southern *boundry* of the tract?

Objected to by contesting defendants.

A. It would indicate that no such line had been run.

page 90.] Q. You examine the ground and country in the neighborhood of "S" and between there and the Race Fork of Knox Creek, upon your recent surveying in that locality did you?

A. I did.

Q. What is the topographical situation of the trees or stumps at "S" with reference to the drain and Race Fork and what is the character of the ground lying between the drain and the fork at the place where Stone's line from the 4 white oaks to "S" crosses that territory?

A. The point "S" is on a hill side on the left hand side of the drain running into the Race Fork and a little over 500 feet from the mouth of the same; between this drain and the Race Fork there is a point ridge rather rough and steep and said line would cross this ridge running towards the 4 white oaks corner and afterwards cross the Race Fork.

Q. That line then coming from the 4 white oaks crosses the Race Fork and goes up over the ridge down on to the drain and up the bank of the drain to these stumps on the opposite hill side, does it?

A. It does.

Q. How far does that line run from the fork across the ridge and drain to the stumps?

A. I did not run this line itself, but have laid it down on my map by triangulation. This shows that it would cross the Race Fork at about 38 poles.

Q. At about what distance do the stumps stand from the *moth* of the drain?

A. Poplar stump No. 1 is 508 feet up the drain from the peg at Dan Justice gate, which is just below the mouth of the drain, or nearly 31 rods.

page 91.] Q. Stone gives the distance from 4 white oaks to the stumps at "S" at 2360 poles, which is laid down on his map as somewhat more than 7 miles—the call of the grant is 3840 poles which is 12 miles, leaving nearly 5 miles of the patent distance unconsumed by the line P to S; did you

discover anything in the neighborhood of S and between there and Race Fork in the physical condition of things or otherwise, that would account for a surveyor crossing the Race Fork and leaving it and crossing the ridge to the drain beyond and crossing the drain upon to the hill side to mark corner trees, instead of stopping on the fork or running out the distance stated —there being nearly 5 miles yet to go according to the call for that line?

A. No I *dident* discover any thing of that character.

Q. What is the condition of the land in the neighborhood of S. and along Race Fork, or what was its condition apparently, before the recent clearing made by Dan Justice, as to the quantity and character of timber in that locality?

A. It is and has been a well timbered region

Q. Stone gives the distance down Knox Fork Creek to the mouth of Race fork and up Race Fork to Dan Justice's as about 14 miles, which is about 2 miles more than the patent call—the distance from the 4 white oaks; he meandered this distance, I understand, upon the theory that James Taylor, who reported the survey of the Morris tract ran down Knox Creek from the 4 white oaks and up Race fork to point S; assuming that the surveyor ran down Knox Creek and up Race fork in order to mark trees as a corner of the tract he was required to lay off did you discover anything in the physicial or geographical situation on Race Fork, or anything else that would explain or justify the assumption that the surveyor having run up the Race Fork, would leave the same and go 30 rods upon the hill side beyond to mark timber?

A. I did not.

Q. You state that you went over the line from A page 92.] to M?

A. I have not yet so stated that but I did go over that line. in the course of surveying heretofore mentioned.

Q. Did you acquaint yourself with the geography of the country along that line?

A. I did.

trees or trees that might have been marked on the original survey of the grant?

A. I did not.

Q. From what direction did you find the Guyandotte River approaches the mouth of Gilbert Creek for a considerable distance and in what direction does it leave that point for a considerable distance

A. I meandered the Guyandotte River from the mouth of Cub Creek I think as far as the mouth of Buffalo; I *havent* the notes of that surveying with me but at the mouth of Gilbert Creek the River ran a general course almost north for some distance above and below.

Q. What direction does Taylor represent the river flowing toward and way from the mouth of the creek that he lays down on his map as Gilbert Creek?

A. The general direction is south-west.

Q. Did you discover anything at the mouth of Gilbert Creek at the point ZZ on Stone's map that was calculated to create the *impresion* upon the mind of a person standing at that point or in that neighborhood that the general course of the river was south-west instead of north or nearly north?

A. I did not.

Q. How would a north line drawn through the mouth of Turkey Creek run with reference to Turkey Creek as far as the same is visable to a person standing at the mouth of Turkey Creek or approaching the same from a southerly direction?

A. It would run about right angles to it.

Q. Did you observe or discover anything about that locality calculated to create the *impresion* upon the mind of a surveyor that a line running north at that point would run

page 95.] up Turkey Creek or that *that* a line running up Turkey Creek would run north?

A. I did not.

Q. Did the line you ran from Turkey Creek to Gilbert Creek cross Pigeon Creek or Buffalo Creek?

A. I did not. It crossed the head of Gilbert Creek, also two

small head branches of Ben Creek, crossed the head of the left fork of Turkey Creek as you go up.

Q. About how near did the line run to Pigeon Creek.

A. The head of Pigeon Creek is several miles to the west—I dont know the exact distance but it is probably some 7 or 8 miles

Q. Do you know where Buffalo Creek of Tug River is?

A. I do. It runs into Tug River about two miles and a half below Williamson.

Q. Does that lay north or south of Tug River, or of Pigeon Creek

A. It lies south of Pigeon creek and comes into Tug River from the east

Q. From your *acquaintence* with the calls of the Morris 500,000 acre survey and grant and the territory you have examined and been over and which you have already mentioned and the lines you have run and other surveying you have done and your knowledge of surveying and experience as a surveyor, have you formed any opinion as to whether the said James Taylor actually surveyed out on the ground the third line called for and described by him in the survey of the 500,000 acres, or whether the line is what you term a platted or projected line, and if so what is that opinion?

Objected to by contesting defendants.

A. I regard the 500,000 acres survey as being entirely a platted survey, which was joined on to a previous survey made by Taylor of 320,000 acres and I am convinced that none of the lines of the 500,000 acre survey, except the line A-P, which is the west line of the 320000 were ever run by surveyor Taylor and that the third line was likewise not run.

page 96.] Q. Did you ever block any trees at the Muzzle corner, if so when?

A. While making the survey *before* referred to in 1895, I went to the corner at A in company with surveyor Sell, a man by the name of Rife who lived in the neighborhood, H. K. Shumate, M. F. Stiles, V. A. Wilder and I think C. L. Dickson, but

Fork, as a corner of the Coleman survey and of the Estep survey?

A. Rece Davis.

Q. You state in your report filed that the beech called for running northerly from that poplar was marked, dont you know that a fallen beech was found there in that neighborhood all of which was gone except 8 or 10 feet of the but and the upturned roots and that the bark and sap had rotted off of it years ago and was covered with moss and that there were no marks on that beech at all?

A. The beech found there was turned out of root some 10 feet of the stump remained—it lay on the ground facing the creek—the bark was still on it and covered with moss. Dan Justice examined the under side of it; pulled off some of the moss and called my attention to some marks on the tree. I examined them and think they were corner marks.

Q. Who showed you the location of this corner?

A. I do not remember. We ran the line out from the poplar—the distince called, looked for the corner which called for a beech and white walnut and 30 feet further on the line than where we had run out this beech stump lay. The examination was made for the remains of a white walnut—there being several beeches in the neighborhood. A white walnut stump was found within some 10 or 12 feet of the fallen beech, after this beech was more closely examined, with the results already given. From this point we ran the next line and at 30 feet over the distance called for reached the next corner.

Q. Who pointed out the next corner?

A. Rece Devis, Levi Lester and Daniel Justice.

Q. On how many sides did you find the poplar
page 99.] on Hurricane fork marked and how may marks on a side?

A. It was marked on three sides—north, east and south. It was marked on the north side twice for a corner—six hacks. on the east side, marked twice as a corner—six hacks on the south side marked once as a corner—three hacks.

Q. Who showed you the location of the lynn stump marked on the map No. 1 and what did you request him to show you?

A. Daniel Justice located the place for the triple lynn stump on my request. Said tiple lynn being the corner between the Coleman and Mays tract. I ran the next line of the grant to Coleman to this lynn stump on a bearing north 53 west a distance of 72 poles—16 poles over the distance called which created doubts in my mind as to its being the proper place.

Q. Why *dident* you lay that line down on your map?

A. Because I have not been requested so to do; each end of it is located on the map and it can be layed down on a moment.

Q. Why did you lay the line from a point in Dan Justice turnip patch to the 2 birches, White oak and hickory, passing through the group of stumps at "S"?

A. As stated yesterday I located the point in the turnip patch by running the next *preceeding* line from a gum the distance of which gave out in the turnip patch. The next line to which you refer would close to the 2 birches, white oak and hickory and run through the point "S" and for this reason I so laid it down.

Q. You were not then requested to lay that line down were you?

A. I was not.

Q. *Dident* you have the two points namely the place in the turnip patch and the 2 birches, white oak and hickory, what reason did you have for laying that line down and omitting the other having no request for either line?

A. Because I regarded it according to my survey as the line of the Coleman tract.

Q. What is the difference of the bearing of that
page 100.] line and the one called for in the Coleman patent and survey?

A. The call in the Coleman patent is south 56-1/4 east, the call of that line as located by me is south 41 east—a difference of 15-1/4 degrees. I wish also to say here that the Mays patent which joins and calls to run with the same line calls south 50-1/2

east—the difference of my bearing from that is 9-1/4 degrees

Q. Which is the older—the Coleman or May?

A. The Coleman I think.

Q. What is the length of that line as called for in the Coleman and May surveys and what is the length of the line that you put down through "S"?

A. The call in the grant is 56 poles. The line I have laid down is about 65-1/2 poles.

Q. How did you measure the distance of the line running from the gum and beech north of the sulphur spring down to the poplar on the Hurricane fork—by surface measurement of by horizontal?

A. By surface measure—the object being to retrace as nearly as possible the lines run by the first surveyor.

Q. Do you know whether the Coleman grant was run by surface measurement of horizontal measurement?

A. I *wasent* there when it was run but I am very positive it was run by surface measurement.

Q. What makes you positive that it was so run?

A. Because it was a custom of the day and time to run lines in that way because I have myself run and measured certain of these lines between known corners and find surface measure at the present day to compare very closely with the distances called for.

Q. *Dident* you find the lines from the poplar corner to the beech and white walnut too short by surface measurement?

A. Yes I found them 30 feet *to* short in a distance of 108 rods.

Q. How much *lojger* was the lines from the beech and white walnut to the two birches, white oak and hickory?

page 101.]

A. That was also 30 feet short by surface measurement.

Q. Was the line between these corners by surface measurement longer than called for, if so how much?

A. It was 30 feet longer.

Q. In which direction were the Coleman lines originally surveyed?

A. The lines of the Coleman grant in going around the survey run from the gum and dog-wood to the triple lynn, then to the white oak 2 birches and hickory, then to the beech and walnut, then to the poplar on the Hurricane fork.

Q. What were your reasons for stopping the 145 pole line from the gum and dogwood in the turnip patch?

A. Because distance was out and no corner found.

Q. Suppose a corner had been found beyond the point of the turnip patch, what would you have done?

Objected to by defendant King.

A. If it had been of the timber called for and bearing marks apparently of the proper age I should have gone on to it.

Q. What is the distance of your point in the turnip patch to the lynn stump shown you as the triple lynn called for?

A. 220-1/2 feet or 13 poles and 6 feet.

Q. Was the point of the triple lynn shown you in the bearing of the line from the gum and dogwood?

A. Very nearly—the line would have passed some feet to the left of it—perhaps 10 feet.

Q. What is the bearing of that lynn stump from the two birches white oak and hickory?

A. The bearing is south 53 east or north 53 west between these two points.

page 102.] Q. What formation lies between the point in the turnip patch and lynn stump?

A. A steep hill side and a cliff.

Q. How near is your point in the turnip patch up to the cliff above?

A. The cliff is about half way between the turnip patch and the lynn corner—lynn stump.

Q. In passing from the gum and dogwood to the point in

the turnip patch how many high ridges and deep hollows did you pass over?

A. Three hollows and two ridges.

Q. What was the character of those ridges?

A. They were rather steep perhaps some 200 feet high from the branches up to the tops.

Q. Was the bark still on either of the poplar stumps at "8."

A. My recollection is the bark was off.

Q. Were the stumps or either of them burned?

A. I think they both showed traces of fire No. 1 did I remember distinctly.

Q. What structure is at the base of the little knoll lying at the mouth of Dan Justice hollow on the Race fork?

A. I *dident* see anything there at all except Dan's fence at the mouth of that drain. He has a fence around there—a rail fence and a gate in it.

Q. Is the knoll entirely surrounded by a common ordinary worm fence?

A. Dan has a garden on the knoll that I think is fenced in. I don't remember any fence down at the bottom of it.

Q. Is there not a common worm rail fence running up and down Race Fork both above and below Dan Justices house?

A. There is a rail fence above for a short distance and there is a fence around his garden but I *dident* notice any fence below along the road—there may be one there but I *dident* notice it.

page 102-1/2.] Q. Did you notice a rail fence running up the small drain on the right hand side at the base of the knoll.

A. That fence I noticed it was not right at the base of the knoll but was about half way up. It is on one side of his garden.

Q. Is the knoll cultivated on the inside down to the fence?

A. I believe it is.

Q. About how many feet from the top of that knoll down to the spring at Dan Justice's house?

A. I presume it is 50 feet—possibly 60 feet.

Q. What is the distance from the top of the knoll down to the Race Fork?

A. It is about 150 feet.

Q. Did you notice a large pool of water right opposite Justice's gate and was not there an abundance of running water in the Race Fork when you were there this month?

A. There is a pool there and there is plenty of water in the Race fork—the girls were doing their washing down there.

Q. *About* what is the area of the flat portion of that knoll?

A. I dont know I *dident* go right up on top of the thing, but there must be a flat place up there 50 feet square or more.

Q. Is the point of ridge which you said the Stone line from the 4 white oaks to point "8" would cross any higher at the crossing of the line than the knoll—in fact would not that line pass immediately at the back side of the knoll and between it and point of the ridge?

A. I *dident* run that line across there but from my recollection of the situation I believe it would cross the point of the ridge at an elevation higher than the top of the knoll and some distance north of it.

Q. Where is the beech stump which you have designated on plat No. 2 as claimed as a line tree of the 500,000 acre grant with reference to the most easy and convenient passage way from the mouth of the small drain up to the point [page 163.] "8."

A. This beech tree would be about on such a line.

Q. About how many feet does it stand from the Stone line approaching the point "8" 2 from the 4 white oaks.

A. About 40 feet.

Q. State what you may know about the other block that is said

to have been cut from the poplar line tree on Knox Creek some distance west of the alleged 4 white corners?

A. All I can tell about it is is to repeat what was told me by Dan Justice and yourself?

Q. Let us have it.

Objected to by defendant King.

A. Dan Justice said to me that this block had been taken out of the tree—that the ax marks were through the bark into the wood; that the parties who took it out counted the annulation back and that from this counting the block *dident* suit them and they threw it down in the weeds or bushes and left it; that he afterwards went and got it and had it at the time he was talking to me. Mr. Campbell stated on a different occasion that this block had been taken out left in the weeds and that *afterwars* he, or some one else sent after it but were not able to find it. That is all I know about it.

Q. Did you see the block?

A. I did not.

Q. Did you ask Justice to show it to you?

A. I believe that I did and he said it would be forthcoming at the proper time.

Q. Was C. W. Campbell present when Dan Justice had that conversation with you?

A. No.

Q. You state on page 3 of your written report herein and in your testimony in chief that the poplar corner on the Hurricane Fork stands on the foot of a hill, do you not remember Mr. Shepard calling your attention to the fact that the poplar tree stood in the little bottom at the very base of the hill and not on the hill side at all.

page 104.]

A. I remember Mr. Shepard remark but never the less this tree does not stand in the bottom but exactly as I have put it on the foot of the hill, it is not on the hill side but on the foot of the hill.

Q. Do you mean the edge where the hill ceases and the level bottom begins?

A. I should say a short distance above that edge?

Q. How much?

A. I should say about 10 feet.

Q. On page 5 of your printed report near the bottom—that is your typewritten report, in speaking of certain chunks of sugar tree roots at the place where it was claimed a sugar tree formerly stood, you use this language. "All were loose and appeared to have been recently placed there" what do you mean by "recently placed there."

A. I mean that they *dident* grow there and that they had evidently been put there. Another thing they had*ent* been there very long because they had not assimilated with the soil surrounding them.

Q. How could you tell that they had not grown there?

A. They were loose and in small chunks in a nice little pile and partly *coveren* up with dirt. The whole arrangement appeared to me to be artificial.

Q. Do you mean to intimate that those roots were grubbed up elsewhere and brought and deposited at this place and were not grubbed up at that place?

Objected to by defendant King.

A. That was the opinion I formed at the time.

Q. How could you tell the difference of a sugar tree root grubbed up elsewhere and brought there from one that may have dug up at that place?

A. I don't know that I could explain that in
page 105.] so many words, but there would be a difference in the character of the soil and the condition of the root; the fact that no other roots appeared in the ground close by that these roots were small pieces or chunks; but they were neatly piled in there and the whole arrangement and surrounding was suggestive of an artificial arrangement.

Q. What was the difference between the roots which you imagined was brought thence from a root that may have dug up

there at that point, or did you make up your mind that none of those roots had been taken out of the ground at that particular spot?

A. Sugar tree roots of course bear more or less resemblance one to the other, but I saw nothing at this point other than these particular roots to indicate that a sugar tree had stood there and as I have stated these roots appeared to me to be foreign to the location in which I found them.

Q. Did you compare those roots to any sugar tree root which you had personal knowledge grew there or in that locality so as to contrast the difference?

A. I *dident* take any samples or make any comparisons.

Q. Suppose some persons had been at this spot a month or six weeks before your visit and had dug up sugar roots at that place *at* left them piled, there in the plowed ground now do you say that you could go there and swear that those roots had or had not been taken up at that place?

A. I could give my opinion about it the same as I already have done.

Q. Let us have your opinion?

Q. How could you swear that those roots did not grow in that soil at that place without further knowledge on the subject?

A. I think I could form a very good idea from an inspection of the ground as to whether they had or had not come from there amounting almost to a positive knowledge.

Q. Would you determine that fact from looking at the roots or by digging down and making a thorough investigation and finding no evidences yet remaining in the ground of the former existence of the sugar tree?

page 106.]

A. I would examine both the roost and the ground.

Q. Suppose you found in the ground sugar tree roots would you say that those you found piled up on the surface had been *grought* from a different locality and piled there?

A. There might be differences which would enable such a distinction to be made.

Q. Do you know of any such difference?

A. There would be difference apparent to the eye and intelligence and can hardly be defined by any set rules?

Q. Can you pick up a sugar tree root in a rich loamy ground such as was found at "S" and say that this root did not grow at and particular spot in that ground?

A. I think I could tell what the probabilities were.

Q. Could you tell that this root had not grown in this rich loam but had grown in like rich loam elsewhere?

A. Taking the root in connection with the locality and other evidences which might be present in regard to a stump and which undoubtedly would be present if the root belonged where it was found, I think a opinion could be safely expressed.

Q. You would then take the root and after a search for similar roots in that locality and finding none you would conclude that that root had grown elsewhere?

A. Yes, taking in conjunction with any other matters or evidences present bearing on the subject.

Q. If there were other evidences present bearing on the subject of the particular chunks of sugar root you examined, please state what they were?

A. I think I have already done so. There is at the point "S" no sign of a sugar tree stump except the roots which I saw there piled in a hole which impressed me at once from their appearance as having been put there. *They* black dirt which should be present as an evidence of decayed sugar roots I did not see. These roots were thoroughly mixed with dirt of the surrounding soil and as I stated before had not assimilated with it or rotted into it.

page 107.

Q. How long would you expect a sugar tree root to lie on top of the ground before it would assimilate with or rot into the earth or dirt?

A. I dont know. The roots in question if they had been dug from that soil would have brought up with them considerable

black dirt and this black dirt would have been scattered around through that hole.

Q. If those roots had lain there a month or six weeks during the heavy rains of June, July and August, would still expect to find the dirt adhering to the roots?

A. I would expect to see it around through the ground immediately surrounding it.

Q. If a hole had been dug in June and July was there any sign of that digging?

A. There had been a hole dug there and these roots were in the hole but whether it was done in June or July I dont know.

Q. Had not the hole, if one had been dug, been filled up almost flush with the surrounding ground, either by the rains beating and washing the dirt back in or by some person?

A. This hole had evidently been fixed by some perso

Q. What do you mean by "being fixed by some person"?

A. I mean partially covered up as you described in the previous question not by the weather or the action of rain but as you stated by some person?

Q. What do you mean by being "covered up", do you mean that there was some design or purpose to conceal, or do you mean that a hole dug in a man's cornfield was filled back?

A. I mean that to the best of my judgment some body had dug a hole at the point we are talking about, had put some sugar tree roots in it and covered them up; as to what design there may have been or whether there was any or not, such design does not appear from any or the evidences on the ground.

page 108.]

Q. Then you are able to swear by looking at a small pile of sugar tree roots and a *depression* in the ground at the point that some body had buried those roots in that *hold* and subsequently dug them up and put then in that little pile?

A. That *isent* what I said. I said that they *were* in a pile in the hole and partially covered up but I *dident* say anything about any body having dug them up at that point.

Q. How deep was the pile from the bottom to the top and high on the side did the dirt come?

A. I suppose there was a peck or more of roots there. The top of the pile was about level with the ground.

Q. How deep down to the bottom of the pile?

A. I ran my hand down through it and it must have been about a foot. I thing I got to the bottom of it.

Q. Would a peck of roots, such as those piled together be as deep as a foot?

A. They were mixed as dirt—at any rate I think I got to the botom of the pile and I dont think I went down more than a foot —they were all loose.

Q. How much of an excavation did you make with your fingers there in that investigation?

A. We *dident* make any considerable excavation, I scraped out some of those roots with my hand—enough to determine the character of them to my satisfaction and what this character was I have already specified in my report.

Q. Was your excavation 6 inches in diameter?

A. I presume it was more than that?

Q. How much more?

A. I investigated the full area of the hole which was perhaps a foot and half across possibly two feet—I *dident* measure it.

Q. Did you make a hole at that place beyond six inches across?

page 109.]

A. I *dident* make any hole at all—that is I did not empty the hole already there of all of its contents at any one time and did not have all of its contents out at any one time, but I investigated the size and character of the hole by taking out *chenks* of roots with my hands and examining them and you might say pawing around in the hole.

Q. Who were present when you were examining the sugar tree roots and the hole?

A. I dont remember just who was at the point when I was there examining the hole but there were at point "S" while *were* were

taking the measurements that I have mentioned, C. W. Campbell, J. A. Shepard, Dan Justice, Lawrence *Al Vill*, Levi Lester and Rece Davis. I dont remember any one else.

Q. Was not Mr. Shepard and myself in your immediate presence when you stooped over and picked up a root and when you announced the fact that that *wa* a sugar root?

A. You may have been I did make such an announcement. There is no doubt about there being sugar tree roots there although you will remember that the first stump we looked at which was claimed by some to be a sugar tree was afterwards was decided to be a beech, that you were present at that time when I examined the beech and that we then went towards the sugar tree point by the lynn stump and I presume you were by when I looked at these roots.

Q. Did you intimate to either Mr. Shepard or myself while over there or at any time until you made your report and gave your testimony in chief that those sugar tree roots had not grown in the ground where they were found but had been brought from elsewhere and *exeposited* there?

A. I did not.

Q. Why if you were of that opinion then *dident* you so inform them

A. I had no special reason in keeping the matter concealed. It *dident* occur to me to mention that or other conclusions until I should file my report.

Did you not consider that you were there as an in-
page 110.] different and impartial person acting under oath and under obligations as much to one side as the other?

A. I did.

Q. How do you know that the south boundary line run by W. D. Sell crosses the head of Race Fork as shown by your map No. 1?

A. Is the place which was shown to me as being such place and as *as* the place where Mr. Stone started his meander line down the creek. Stone's peg is still standing there. Personally I dont know about it—I was not with Sell when he ran that line.

Q. How do you know that is Stone's peg from which he meandered the creek?

A. I only know it as having been pointed out to me as at that place.

Q. Who pointed it out to you?

A. Dan Justice

Q. Who told you that the peg you refer to was the one from which Stone had meandered Race Fork?

A. Daniel Justice.

Q. Are you as expert in poplar roots as you would claim to be in sugar tree roots?

A. I know something about poplar roots?

Q. Did those loose detached poplar roots you saw scattered around at the depression where you understood that it is claimed the third poplar corner tree stood, dug up at that place, or did they grow in some poor soil and were brought to that depression and scattered around—I mean were they dug up at that place or brought from some other place and deposited there?

A. There is no sign of a poplar stump stood at this point. I do not think these roots came from this depression: there are however, several other poplars in the neighborhood from which they might have come.

page 111.] Q. Were they dug up within a *radias* to which poplar roots *wouod* extend on the supposition that a poplar tree grew and afterwards uprooted at that depression?

A. I think not.

Q. Now tell us your reasons?

A. Such a tree having uprooted and being now gone and destroyed its roots would be rotten—these roots appeared to be sound.

Q. I *dident* ask you for an opinion whether these particular poplar roots grew from any particular tree but only in a radius from that depresssion—to which poplar trees would grow or ex-

tend would you be able by looking at the roots to say that they *dident* come out of that ground within such radius?

A. I dont understand that question.

Q. Did you make any excavation at the supposed poplar depression.

A. I did not.

Q. Do you know what is there still in the ground? or what was once there in the ground.

A. There is a depression there in the ground where a tree may have stood. What kind it was I dont know. I made no excavations in the ground and of course do not know what is beneath it.

Q. Might not *thse* roots have grown from some other poplar tree in the neighborhood and still have been dug up at or near that depression?

A. I should regard that as unlikely because there *dident* appear to be any other poplar stump or any poplar stump, close enough to this depression for that to be the case.

Q. Suppose it be shown by reputable men that those poplar roots were actually dug out of the ground at and near the place you saw *they* lying, close to that depression in the ground would you infer because they were 16 feet or more from poplar stump No. 1 that they like the sugar tree roots had migrated from a distant section?

Objected to by defendant King.

page 112.] A. Such evidence would of course cause me to change my opinion.

Q. You expressed the opinion on page 87 of your evidence that it would be almost impossible for anyone running the line from your point in the turnip patch to the two birches, white oak and hickory to fail to note the marking of the sugar tree and the poplars if they were marked, do you mean th. a person retracing the Coleman line would have observed the marks or that the surveyor who originally ran out or made the Coleman survey would have observed it?

A. I think they would both have been very apt to notice them.

Q. Does a surveyor who first locates a tract expect to find *mar* trees upon his line, before it was made?

A. *O* he may or he may not. The surveyor of the Coleman land of course expected to find the corners of the Estep tract because he calls them and runs to them and it seems very likely to me that in running from the triple lynn to the next corner which would or is a corner of the Estep survey and for which he was looking he would very naturally have seen the corners at "S."

Q. Dont you think it is evident that *te* surveyor of the Coleman tract knew the location of the corner of the Estep survey described as 2 birches, white oak and hickory, and located on a little rocky flat within a few poles of Race Fork, knew at that time not only the kind of timber called for but its particular locality and would know that the location of the point "S" would in no sense meet the *desfoription* as to timber or locality?

A. It is probable that the surveyor knew the location of that Estep corner but he does not seem to be sure about it; his report of survey describes this corner as said to be a corner of William Estep and in running the next two lines he fails to run with the Estep tract in one line running over on it and in the next line leaving some vacant land between the

page 113.] Coleman *between the* and the Estep tracts, judging from this I should say that he had found the corner in question only after some search fo it and having found it was not quite certain what it was?

Q. In turning from your point in the turnip patch to the 2 birches white oak and hickory, *why* would expect the surveyor to be examining sugar trees and poplar trees at the point "S" when scarcely half way on the distance and not more than half way to the Race Fork?

A. I *dident* intend to say the surveyor of the Coleman tract would be making any special search for corners at "S", but that in running that line which passes "S" he would be more than likely to see the corner.

Q. What reason would he have for looking out for any

marked timber between that point and the corner of the Estep survey?

A. I have just stated that I *dident* think he would have any especial reason.

Q. Would he have any occasion to take note of the observation if *if* he had *causuallly* observed the marked timber?

A. He might if he was familiar with the country, the discovery of a strange corner in his own territory would cause him, I think to pay attention to it and to note it particularly.

Q. Would he take any note of it in the survey he was making?

A. O I think not it *wouldent* be a matter of official record.

Q. When the May 800 acre survey was made did you observe any evidence that the Coleman lines called for were retraced by the surveyor of the May tract?

A. No I discovered no such evidence, altho' such a survey might have been made and no traces left.

Q. You also express the opinion on page 88 of your evidence that any one running the line from the point shown you by Dan Justice as the location of the triple lynn called for and at 2 birches white oak and hickory would not likely fail to notice the marked trees at "S", altho' they *stood* 150 feet to the left o that line, what makes you believe that any surveyor in running between those two points either when establishing the lines for the first time or in subsequently retracing it, would

page 114.] likely or even probably take in such wide scope of close observation for trees and localities not called for?

A. It is the business of a surveyor to make himself familiar with the country thro' which he *travells*, especially with the location of corner trees, of course some men pay more attention to things along the line than others and it is hard to fix a standard, but it seems to me with that section entirely in the woods, and a surveyor running the line you have mentioned either in climbing the hill or going down the hill, he would be apt to run against these trees, at the same time it is possible he might not.

Q. If he *preceeded* or followed his chainman on that line would he not pass on the blind side of those marks—that is to the west, they being marked on the east and north, if marked at all?

A. Yes he would.

Q. What observations did you make in running from the poplar on the Hurricane Fork to the beech and white walnut?

A. I looked for line trees along the line.

Q. And how wide a scope?

A. I observed trees within perhaps a rod or so on each side of the line.

Q. Did you at any time veer off the line 150 to examine for something you were not looking for or expecting to find?

A. I did not *not*. It is my custom generally to put some one out on the side to observe the surrounding timber, but in this case there appeared to be no need of for it the object of running this line being simply to determine how it would run out with reference to the two birches, white oak and hickory.

Q. When you are running a line for the first time through the woods, do you ever put any body out on either side to search for marked timber?

A. I have never run any original lines through the woods, my work been in retracing old lines. In doing that I always put some one *out* and I make detours myself, unless
page 115. | in some special cases where I do not consider it necessary. If I was going into a country for the first time, especially in a wilderness and making an original survey, I should be very particular to examine all the ground as to its topography, timber etc. and while not making perhaps any special search for marked timber I think I should be very apt to run across any that was marked within a short distance of the line.

Q. When you say a short distance do you mean 120 or 150 feet on each side?

A. That might be a little excessive.

Q. If you yourself never established any original surveys

how can you say that it is likely or probable that others who have would take in such wide range of searching for marked timber when they were in what they supposed to be waste and unappropriated lands

Objected to by *by* the defendant King.

A. I have followed so many of these surveys and observed what has been done by the old people who ran them, most of whom are now very old or dead, that I have become very familiar with them and with the methods which were employed.

Q. Name a single instance where you have found evidence that the original *surveior* took such a scope of observation as 150 *fett* or *ever* 120 feet on either side of his line when running out waste and unappropriated land?

A. I dont recall the name of any special survey in which that is *ghe* case but where a surveyor is covering a large boundary and laying off a tract joining other tracts, the corners of which he does not personally know a great deal of hunting must of necessity be done to find and run to them

page 116.] The depositions not being completed it is ordered that the further taking thereof be adjourned until tomorrow morning at same place.

J. T. GRAHAM
Commissioner

Resumed the taking of depositions this the 20th. day of August 1902 pursuant to adjournment on yesterday.

Present:—The same attorneys as on yesterday.

Thereupon Mr. Campbell, attorney for the contesting defendants proceeded with the cross examination of the witness W. C. Reddy, as follows:—

Q. You say on page 89 in your examination in chief that there does not appear to be or ever to have been any trail or pass way up the drain at Justices house and across towards Paw-Paw, when did you make any examination up that Creek or across that hill, to determine whether there is or ever was such a trail?

A. The mountain between the Paw Paw Fork and the Race

fork is *as* high, *steep* and narrow ridge; the hollow at Dun Justices's is comparatively short and after going up it for some 1200 feet, the heads of this Hollow are as steep as the mountain side itself, no one would choose this point in my opinion, for a passage way over on to Paw Paw Creek, particularly as there is some five or six hundred yards further up the Race Fork a well defined trail over which I have been leading up the *low* Gap branch, through a Low Gap in the mountain from which this branch derives its name, and over on to Paw Paw Creek, even this passage way is rough but infinitely easier than any passage way appears to be possible, over the ridge at Dan Justices. I went over this route while in the neighborhood making this survey and went some distance down on to Paw Paw Creek to a postoffice named Ira. The route over which I went has been long and well travelled and appears to have been the regular crossing place from Race Fork to Paw Paw for many years.

page 117.] Q. I want you to answer my question?

A. I have already stated that I made this examination while on the ground *ingaged* in this survey. I did not go over the ground with a magnifying glass looking for foot prints but I made observation sufficient to convince me that this particular hollow was not and had not been used as a passage way over on to Paw Paw Creek.

Q. Were you in the Dan Justice hollow above the crossing of the line from the gum to the triple lynn?

A. Only a short distance.

Q. How far above the line?

A. *Possible* some two or three rods. This line crosses very near the forks of the hollow and I came a little above it in coming down the hill.

Q. Is not the land cleared from the mouth of the hollow on both sides almost if not entirely to the head of both forks and has been cultivated this year in corn and other crops?

A. It is cleared on the left hand side as far as and a little above, where the line mentioned crossed the hollow. The right hand side is cleared for a short distance up the hill about half as

far up the hollow as where this line crossed. The entire Justice clearing is now cultivated so far as I saw, in corn, the turnip patch and a garden. I noticed no other kind of crops. There were two cat stacks in a flat place in the hollow a short distance below the forks of the same which had also been taken off the land this year.

Q. Did *you* investigation for a trail or path consist of anything more casually looking up the hollow toward the ridge, from a *loint* about the line mentioned or from points below that?

A. No I was not specially looking for anything of the kind.

Q. Did you at the time have your attention called to the question, whether or not there is not or ever has been

page 118.] in times past any trail or passage way up that hollow and over on to Paw Paw?

A. No, except that in going over to Paw Paw no such trail was suggested to me and I went the way already described.

Q. Did you mean to say in your examination in chief that your map shows all of the small drains or all of the *drain* large and small, into the Race Fork from the Sulphur Spring up to the old Estep clearing?

A. It shows all that I saw.

Q. At the bottom of page 90 of your examination, in speaking of certain timber in the neighborhood of the poplar corner at Hurricane fork, you say there stood a beech 21 7/10 feet away from the poplar which *appeard* to be marked as a side line tree, but the upper mark of which might have been a knot, are you not *thouroughly* convinced that what you referred to as the upper mark, was never made by artificial means, and was not your attention called to the fact that it *wqs* a mere flare in the bark extending around six or eight inches?

A. I dont think it was that long but I thought it was a knot and still think so.

Q. I request you to lay down on your map No. 1 the line as you run in on the ground from the 2 birches white oak and hick-

ory to the stump pointed to you as *as* the stump of the triple lynn called for

A. I have done so.

Q. Does Taylor *gave* the bearing and course of Guyandotte River at above and below, Gilbert Creek, in his notes of his survey?

A. He does not but shows it on the plat *accompaning* same.

Q. What is the scale of his plat?

A. I have forgotten but I think a 1000 poles to the inch.

Q. That is over three miles to the inch?

A. Yes sir.

Q. Now do you think it likely that there would be any effect on the part of the surveyor to sketch in on his plat, the exact course of the river.

page 119.] A. Not in small details but I should expect the general direction of the river to be properly shown.

Q. Do you believe, or rather is it your opinion, that James Taylor actually ran on the ground the line from the alleged 4 white oaks on the north- *wfst* bank of Knox Creek to the alleged 2 poplars and 2 chestnuts on Muzzle Creek at "A"?

A. It is.

Q. How do you account for the fact that that line is 7 miles short of the distance called for?

A. I account for it by the belief on my part that Taylor deliberately misrepresents the length of that line on his plat and description of the surveys joining it in order to include in them a certain number of acres of land without actually extending the line on the ground.

Q. Do you know the fact that other lines claimed to have been run by Jim Taylor on the 320,000 acre tract were all short from a half to a third?

A. I do.

Q. Do you account for that in the same way as you do for the shortage in the line from A to P?

Objected to by defendant King.

A. As to lines along the Indian Ridge I think the shortage there is accounted for by measurements around the ridge with the meanders of the same, although Taylor called for various straight lines which on the ground cut across bends in the ridge thus making the actual distance, between points called for considerably shorter than they would be in measuring around the ridge. The east line of the survey of 320,000 acres I think was lengthened in the same manner as the line A-P, the two south lines of the survey I have no definite information upon; I looked for some of these corners but was unable to find them.

Q. Is it your opinion that James Taylor did not
page 120.] run and measure a straight line between the corners established along the Indian Ridge, but followed the course of the ridge and measured it and gave such measurement as the distance between the corners?

Objected to by defendant King.

A. That is my opinion.

Q. How in your opinion did James Taylor run the line from A to P was it by compass and chain and with an effort at accuracy except as to distance, and on a straight line?

A. I think he ran this line with compass and chain originally for a smaller survey and that he afterwards enlarged his map without *aagain* going over the ground to take in an additional number of acres.

Q. How do you account for the fact that he calls for crossing Tug River at the mouth of Little War Creek and up the same and the north east fork thereof when the line in fact does not cross within quite a distance of the mouth of Little War Creek, does not go up the same or the north-east fork thereof?

A. I take the call up Little War Creek not to mean up the creek with the meanders but up the general direction of the creek and along its water shed.

Q. What does he mean by saying crossing at the mouth of Little War Creek?

A. I presume that he must have crossed at any rate close to the mouth of Little War Creek.

Q. Did you ever note a similarity of the language in the description of the line of the 320,000 acre tract in the locality of Little War Creek to that used by Taylor in describing the West ern line of the 500,000 acres on Turkey Creek and note the similarity of the two lines with *reference* to the two creeks named.

A. I have.

page 121.] Q. Did you ever make an ax mark in poplar bark not deep enough to penetrate through the bark and then observe how long that mark would remain *visable?*

A. I never made such an experiment.

Q. Do you know the fact that one of the marks on one of the *poplays* at the Muzzle corner at "A" was in *in* 1895 or 6 still *visable* in the bark but no trace of it could be found in the wood, although the wood was split up into small parcels in searching for the marks in the wood?

A. I have heard it so stated.

RE-EXAMINED

By Judge Stiles.

Q. When you went recently to do surveying you have *described* on Race Fork, what instruction did I give you with reference to surveying the lines of the Coleman tract?

A. When I went over there you furnished me copies of surveys made for C. A. Lonhart, R. D. Coleman, and William Estep with instructions to locate such corners of these *tracts* as might be found in the immediate neighborhood on the point "S". You also instructed me to meander the Race Fork in the neighborhood of Dan Justice and above and as far as the sulphur spring below, noting the branches on the way; also to ascertain the relative location of the trees at point "S" and *there* distance from the creek, the hollow and Dan Justice's house.

Q. Did you survey the lines of the Coleman and other tracts in the neighborhood of the point "S" and lay down those lines on *your* plat pursuant to any specific direction as to how they should be done or according to your judgment and knowledge

and information gained upon the ground and in the course of your work and investigation?

A. I have laid them down as showing the results
page 122.] of my survey and not according to any specific directions.

Q. In endeavoring to find the corners called for in the neighborhood of the Dan Justice drain, on the junior surveys that you ran and in endeavoring to retrace the lines of those tracts in that locality did you have occasion, to traverse a considerably portion of the ground on the side of that hollow upon which the stumps at "S" are situated and in the neighborhood of such stumps and up and down the drain in that neighborhood?

A. I did.

Q. Did you see any evidence of a trail or passage way running up that hollow and across the ridge or observe any one passing in that direction except the persons with you?

A. I did not.

Q. Is a plainly marked tree generally visable a distance of 120 or 150 feet?

A. It would be I think to a people that is especially observant on such matters, such as a surveyor accustomed to being in the woods.

Q. Is there anything that is a more constant and natural subject of observation to a surveyor, anything which his eye naturally and more voluntary searches out, than marked trees?

A. I think not.

Q. Is the lynn stump shown you as being the stump of the triple lynn reached by either the course or distance called to run to reach the "triple lynn" from either of the adjacent corners

Objected to by contesting defendant because the witness has already heretofore stated the distance and bearing of the lynn stump from the 2 birches, white oak and hickory and that the distance from the gum corner falls short and the *bearin* would miss it about 10 feet.

A. The distance failed to reach, while the bearing run very closely to the point shown me as the stump of such
page 123.] such tree.

A. I suppose it results that the distance from the triple to the 2 birches, white oak and hickory also fail to reach that point from the lynn stump or any other point in the immediate neighborhood?

A. In running from the lynn stump mentioned the course and distance would fail to reach the 2 birches white oak and hickory.

Q. Can you explain how an error may have been made in the line in question by error in reading the *compas* which when corrected would give the course of that line about south 41 east?

Objected to by contesting defendants.

A. The bearing and distance from the gum and dogwood corner gives out in Dan Justice's turnip patch, the next call is south 56¼ east, the *compas* plate is graduated in degrees with every ten degrees marked, if the surveyor had read, referring to the 50 mark on the wrong side of the same he would read 56¼, where he should have read, 43¾. The present bearing of the line is 41 making a change of 2¾ degrees, the error might have occurred in way.

Q. Is a mistake of that sort—reading from the wrong side of the north or south line of the needle, a common one?

A. Mistakes of this kind are sometimes made.

Q. Is the *appearence* of the beech trees near the Estep and Coleman corner such that it might be taken for a side line tree by casual observation?

A. It is, standing at some distance from it I was first of this opinion,—that it was marked as a line.

Q. Did you announce to any person not Messrs Campbell and *Shepard* alone, the conclusion you reached from the examination you made of the sugar tree roots about the lynn stump at "S" or the result of your examination of the depression to the

east of there, or about any other matter upon which your opinion was not asked by them?

A. I think the first I mentioned these matters page 124.] was when making up my report.

Q. Were you requested by Mr. Campbell or Mr. Shepard to run any line or do any surveying?

A. I was not.

Q. If you had been requested would you have done such work to the best of your ability?

A. I would. I asked them if they wanted anything done and they stated that they had had all of their work done previously.

Q. Did they or either of them accompany you throughout all your work and investigation in that locality?

A. And they were both on the ground—Mr. Campbell carried chain part of the time and was along on most of the other work. Neither of them was present during the meandering the upper end of the Race Fork from the Estep house up. I made a trip over on to Paw Paw when these gentlemen were not present.

Q. Was I present at any time?

A. You were not.

Q. Did you examine all trees, stumps, marks and other *objectes* and make all observations and note all matters that you were requested by either Mr. Campbell or Mr. Shepard to examine, make or note?

A. I did.

Q. I will ask you to lay down on the Stone map as nearly as you can the lines laid down on the map accompanying your report in the neighborhood of point "S"

A. I will do so to the best of my ability but the scale will be very small .

Q. Would a tree standing more than 100 feet to one side of

a line be in any proper sense regarded or treated as a line tree of such line?

A. No that *it* too far away.

page 125-6.] Q. Did you take out more than one set of marks from the chestnut tree or log at "A" at the time you spoke of blocking the same?

A. No we took out the set of marks which we agreed at the time faced along the line CX.

Q. And you explored the log thoroughly for marks on the north side?

A. I did and we became convinced that there had been none.

Q. Was the green poplar standing at the time?

A. It was.

Q. Where a surveyor reports or returns with his survey a map or plat thereof, is it not the custom to represent the streams and what other objects what are represented, as the surveyor either finds them to be or supposes them to be, where they cross the lines laid down, or where the lines are supposed to cross them?

A. It is.

Q. Is the effort at accuracy usually greater along those lines than elsewhere?

A. Yes—the stream crossings will be noted pretty accurately in the running of the lines while the inside topography, unless actually run by the surveyor *whill* be sketched in by such information as he has.

And further this deponent saith not.

Witness claims 3 days

W. C. REDDY

page 127.] CHARLES D. BROMLEY, a witness *intruduced* by the defendant H. C. King after being first duly sworn upon oath testified as follows:

EXAMINED

By Judge Stiles.

Q. State your age residence and occupation?

A. Age 23 years, residence Wayne Court House, W. Va. I am now getting out ties. I have formerly been a merchant.

Q. Did you at any time during the last spring or summer make a visit to the neighborhood where Dan Justice lives on the Race Fork of Knox Creek in Buchanan Virginia for the purpose of examining certain stumps near the drains at Justice's house, if so state when that was and how you came to make the trip?

A. I did on the 23rd. day of May 1902, Mr. Wilder came to Wayne and asked Mr. Wilson County *Cle4k* of Wayne County, to get him two men to go along and Mr. Wilson employed me or asked me if I would go.

Q. Who went with you on the trip?

A. There was Burnie Mills and Cain Wilson, Mr. Dickson—who lives here in town went with us—that is part of the way, we met Mr. Davis three or *tour* miles propably from the point and he went with us also

Q. Did you examine the said stumps and if so where did they stand with reference to Dan Justice's house and the hollow in which his house stands?

A. We examined the stumps. It was up on the hill I suppose north of his house a short distance only *about* 200 yards on the left side going up.

Q. What stumps did you examine?

A. We examined two poplar stumps and a beech and a gum and a stump that we taken to be a lynn stump.

Q. About what was the size of the poplar stumps?

A. Well we *dident* measure but one I believe—it was poplar stump No. 1 and was 35 inches in diameter.

Q. Was that the upper or lower of the two stumps?

A. It was the lower.

page 128.] Q. Did you notice any logs lying in the drain or hollow below the lower poplar stump?

A. Yes sir.

Q. Did you make any examination of that to see whether it had come from the poplar stump and if so what conclusion did you reach?

A. We made an examination—a thorough examination, and came to the conclusion that it came from this poplar stump No. 1

Q. What did you discover about the log or stump to lead to that conclusion?

A. Well the log had been cut so as to fall either east or west and either way it would have fell it could have been rolled in this position; the but of the log had been cut so that it would fit the stump, portion of the tree broke on the south side 8 inches and on the north side 10 inches, in falling this tree one side of it pulled out of the stump a sliver probably 6 inches long and on the opposite side it pulled a sliver out of the tree. They would to together all right.

Q. By that do you mean that there was a hole in the stump where the sliver on the log pulled out?

A. Yes sir and the part that pulled out of the stump was on the log and the part that pulled out of the log was on the stump.

Q. Did you and the others who were with you make any examination of the log and stump to see if the tree had been marked as a *corn* tree, if so state what you found, or failed to find.

A. We found no marks on the stump or tree except the hack marks made by peelers in peeling this log where they scalped the bark

Q. About how far was this log from the poplar stump from which it came?

A. I think it was about 57 feet—laying below something like that.

Q. Did you and those with you examine a depression in the ground a short distance south of poplar stump No. 1 or nearly south?

A. We did

page 129.] Q. In what manner and to what extent was that examination made?

A. It was made by Mr. Davis with a *mattox* digging around in several places to find any signs of a tree having been there.

Q. Did you discover any?

A. We did not.

Q. What portion of the depression did you dig over?

A. Well he dug over several different places—I don't know how many.

Q. Did you find any roots of any kind in the depression?

A. We did not.

Q. Did you find anything besides the depression itself to indicate in any way that a tree of any kind had ever stood there?

A. Well nothing outside of the depression and the soft dirt—it was kind of soft and that is the only thing that indicated that a tree had been there.

Q. Did you and those with you make any examination about the lynn stump standing some distance to the east of the upper poplar stump?

A. We did.

Q. Describe that stump?

A. Well what is left of it is a mere shell the shape of a half moon or something like that and about two and a half feet across and three or four inches thick, the shell part.

Q. Is it fast in the ground?

A. Yes sir.

Q. What examination was made about the stump and in the ground around it?

A. Well there was one or two of them—I don't know which one of them was digging around it trying to find roots and there was about three places that they dug.

Q. Did you dig up any root or wood?

A. Yes sir.

page 130.] Q. Was the wood that you dug up fast to the stump?

A. Yes sir, the part we dug up was fast to the stump.

Q. Did you find any roots that did not belong to this stump?

A. Well they all looked alike what was there, I don't know whether they all belonged to the stump or not, *the* all had the same resemblance—were the same kind of wood—they looked to be the same kind of wood to the best of my knowledge.

Q. What conclusion, if any, did you arrive at as to whether the stump and the roots and wood that you dug up were a part and parcel of the one single stump?

A. They had the appearance of that and to the best of my knowledge they were all the same.

Q. Did you find any indications of a sugar tree or any other tree different from that stump had grown at any time close to that stump or within two feet?

A. No sir I did not.

Q. Did you bring away any portion of the stump or wood that you dug up at that examination, if so state what it was and what you did with it?

A. We dug up a root of this stump, it is probably about twelve inches long and had a worm hole eaten in one end of it and I think it was kind of forked, we delivered it to Mr. V. A. Wilder.

Q. Did you identify it by any marks?

A. Yes sir. Mr. B. Mills, W. L. Wilson and myself wrote our initials on this root.

Q. Was all the wood and roots that you discovered about this stump of the same kind and character as the piece you brought away?

A. Part of it was and part of it appeared to be the same kind of wood only it was decayed more.

Q. In cutting down the poplar tree No. 1 or the log that you saw in the *srain* below it, how far upon the log had
page 131.] the chip extended that is how wide a chip had been taken out of the tree?

A. About a twelve inch chip.

Q. About how high was the poplar stump No. 1?

A. North and south 44 inches, east 50 inches, 32 inches west.

Q. Were all the members of the party with you while these examinations were being made?

A. They were.

Q. Who if any one took you from Dan Justices house to these stumps?

A. Dan Justice showed these stumps to us.

Q. Had you ever met V. A. Wilder or Mr. Dickson prior to going on this trip.

A. No sir.

Q. When was the first time you ever saw me to speak with me?

A. Yesterday I think it was.

Q. Did you look up the side of the hill above the poplar log in the drain to see whether there were any other stumps than the ones you have mentioned from which the log could come, and if so what conclusion did you arrive at?

A. We looked up the hill but could not see no other large poplar stumps.

Q. How high was the corn in the field at that time?

A. Well the corn was probably two weeks old *probaly* four or five inches high,

Q. Was the view to the top of the hill in any ways obstructed?

A. No sir. That is as far as we *coul* see it was not.

Q. How much if any, water was flowing in that drain?

A. Above the spring down close to Dan Justices house, I dont think there was any water in the drain at all—it was dry to the best of my knowledge.

Q. What sort of a spring was that by Dan Justices house?

A. It was a very ordinary spring I would call it—I could hardly drink the water, it was muddy and warm; it was probably three feet across and not over ten or twelve inches deep.

page 132.]

CROSS-EXAMINATION

By Mr. Campbell.

Q. What have you followed, from your childhood up to the present time?

A. Well I have done a little of everything. The principal part of it was in a store and I have worked in a saw mill and grist mill—never farmed but very little.

Q. What were you to be paid for your trip over to Knox Creek and by whom?

A. I was paid $5.00 a day and expenses by Mr. Wilder.

Q. How many days did you put in your account and what was the amount of your expenses?

A. I got paid for three days—I dont know what the expenses were he footed them up until the time we started back and then

he gave us expense money to come home on I dont know what the exact amount of the expenses was.

Q. Did Cain Wilson go and come with you?

A. Yes sir he was on the train that morning when we got on at Wayne and was with us until we got back,—he went on to Kenova I suppose.

Q. Did you examine any other poplar stumps than those you have mentioned?

A. No sir.

Q. If you were to draw a line from your upper stump No. 1 square across the little drain and hollow would not such line cross the poplar logs you refer to in the branch or drain?

A. I dont know whether it would or not.

Q. Which end of the log was up the creek or drain?

A. The but of the log—the end from the stump was up the drain.

Q. Did you observe any other log in the drain?

A. Yes sir there was another log or two in the drain I believe.

Q. Did they project higher up the drain than the but cut you examined.

page 133.] A. I dont remember whether they did or not, but I think one of them did but am not positive.

Q. Did you ever have any experience in felling timber?

A. I never fell any my self but I have seen it felled.

Q. Supposing that tree had fallen east-ward would or would not it jumped some distance from the stump?

A. It probably would, some time a tree jumps and some times it *doesent* it breaks off you know and slides down the stump.

Q. Is it not an invariable rule that when you cut a tree down a hill in cleared land below that it does jump a greater *of* less distance down the hill from the stump, and would it not be unreasonable to expect in this case that it would jump or slide eight or ten feet below?

A. I dont know how far it would slide it is owning to the lay of the ground sometimes a tree could slide a long ways but it would be *owning* to the lay of the ground and *tht* number of

limbs it had on it and the way it was cut, but in most cases a tree will jump down the hill in cleared land.

Q. Did you notice that your poplar stump No. 1 and the poplar log in the drain you have spoken about were both considerable burned?

A. They were not considerably burned—they were charred—the stump was charred on the top and the east and west sides, just charred a little bit.

Q. Was not the break of the stump between the notches burnt out?

A. No sir it was not.

Q. Did you notice the end of the log you examined was also burned—I mean the *but* end of it?

A. No, sir I dont think it had been burned.

Q. Was there aay bark upon the poplar log you examined or upon the poplar stump you examined.

A. No sir I dont think there was.

Q. Did you split open the stump in any manner
page 134.] or block the poplar log in any manner?

A. No sir.

Q. You did not expect then to find ancient marks still visible in the outer wood of the stump or log did you?

A. I dont know you can cut into a tree a good big notch and when it grows up there would be a kind of a knot in it. I *dident* find any there.

Q. Did you ever have any experience or make any observations in or of blocking anciently marked trees?

A. No sir.

Q. What sort of marks were you looking for?

A. I *dident* know what kind of marks we were looking for I was just looking to see if there were any and what kind they would be.

Q. What Davis was it who did the digging at the depression a short distance from poplar stump No. 1?

A. I believe his name was Rece Davis.

Q. Who did the digging around your lynn stump?

A. I think Mr. Davis and Mr. Dickson probably did the digging Dan Justice may have done some but I am not sure.

Q. Inside of what radius was the digging around the lynn stump confined?

A. Well I dont know how far in feet, the upper side, lower side and that side it might have been four or five feet or may be more.

Q. The digging then at that point was confined to point immediately on the outside of the lynn stump?

A. The digging was confined around this shell.

Q. Did you dig at any other *poijt* than the two places you have mentioned—the lynn stump and the depression a short distance from poplar stump No. 1.

A. No sir I dont think we did.

Q. Did you ever have any experience as a woodman?

A. No sir I never did.

Q. Did you measure the *heighths* of the four points of the compass of the upper poplar stump.

[page 135.] A. No sir.

Q. Why *dident* you.

A. I *couldent* tell you why—Mr. *Dickson dident* say anything about it and I think Mr. Wilson I dont think he had any instruction to measure it I dont know anything about that.

RE-DIRECT EXAMINATION

By Judge Stiles.

Q. Did I understand you to say that you dug around the lynn stump on the inner side—the side where it was broken off, and also around on the other side of the stump.

A. Yes sir.

Q. Is Mr. Wilson, who was with you a surveyor?

A. Yes sir I think he is.

Q. Did he also examine the log in the drain and the poplar stump No. 1?

A. Yes sir.

Q. Were any measurements of the stump and log made for the purposes of comparison, one with the other?

A. Yes sir there were.

Q. Did the log and stump correspond in size?

A. Yes sir.

Q. In what part of the country were you born?

A. I was born in Wayne County.

Q. Lived there all your life?

A. Yes sir.

Q. Is that a timbered country?

A. Partly timber at present and most of it has been.

Q. Are you familiar with the different kind of trees growing in that portion of West Virginia?

A. Yes sir.

page 136. Q. Is the timber of Wayne County about like that on Knox Creek—the same kind?

A. The timber on Knox Creek is about the same kind of timber that we have.

Q. Did the fact that you were paid for your time in going over to Knox Creek to make investigations you have spoken of in any way affect your conclusions and the result of your investigations?

A. No sir.

Q. Had you any interest whatever in the result of the examination to be made by you?

A. No sir.

Q. Have you any interest whatever, in the result of this suit or of any issue therein?

A. No sir I have not.

Q. Did you know anything particular about the suit or what is involved in it?

A. Well there is some land I understand is involved on the Race Fork of Knox, in Buchanan County, Virginia, is all I *know* about it.

RE-CROSS-EXAMINED

Q. Did you notice the fact that the grain of wood in the poplar stump No. 1, as disclosed by the sun cracks in the sap was

almost perfectly straight and that the wood in the poplar log you have referred as exposed by the sun cracks in the sap, actually twist a quarter or more around the log a distance of ten or twelve from the *but?*

A. No sir I *dident* notice anything of that kind.

And further this deponeth saith not.

C. V. BROMLEY.

Witness claims 2 days and 70 miles

page 137.] B. MILLS a witness introduced by the defendant King after being first duly sworn upon oath testified as follows:

EXAMINED

By Judge Stiles.

Q. State your age, residence and occupation?

A. Age 28 years, residence Wayne, W. Va., occupation Deputy County Clerk of Wayne County, West Virginia.

Q. Did you ever make a trip to Race Fork of Knox Creek in company with Charles Bromley, W. L. Wilson, and C. L. Dickson, to examine some stumps and other matters on the Dan Justice drain of Race fork?

A. Yes sir.

Q. When?

A. We started from home May 22nd, 1902. Got there May 23rd.

Q. At whose request?

A. Mr. Wilson the County Clerk was the man that spoke to me about it first.

Q. Did you see V. A. Wilder in connection with going on that trip at that time or before you went?

A. Yes sir I saw Mr. Wilder but he *dident* speak to me in regard to the matter.

Q. Did you make any examination of any stumps up the drain where Dan Justice lives on the left hand side of the hollow going up, if so, state stumps you examined?

A. Yes we *examined* several stumps—two poplars, beech, gum and what was supposed to be a lynn stump—that is what I *taken* it to be—the shell of a lynn stump

Q. Describe that shell and *th* stump what *thre* is of it?

A. The shell was about, to, the best of my recollection, two feet across, the lower side of the stump is decayed and gone. The shell was about three or four inches thick.

Q. Did you dig around this stump or did any one in your presence to see what might be found in the way of roots or wood?

A. Yes sir we had some one to *dif*.

page 138.] Q. Did you dig up *and* roots or rotten wood?

A. We did.

Q. How did they compare in kind and character with the shell of the stump, were they of the same kind *of* different?

A. They were of the same kind.

Q. Did you discover any evidence that any other kind of tree had grown in close connection with the lynn stump or within two feet or so of the stump?

A. I did not.

Q. How thorough an investigation of the stump and immediate surroundings did you make?

A. We dug all around the lower side of the stump or shell also on the north and south-west side.

Q. Did you discover any sugar tree roots at that place—about the lynn stump?

A. We found no roots that I *taken* to be sugar tree roots.

Q. Did you examine the poplar stump standing north east of the lynn stump and about fifty five feet from the bottom of the drain

A. Yes sir I did

Q. Did you notice a poplar log lying in the drain or hollow below the stump last mentioned?

A. I did.

Q. Did you make any examination of the log and *th4* stump to see whether the log had grown from the stump, if so what conclusion did you reach?

A. Yes sir I made an examination. I am satisfied that the log had come off of the stump mentioned.

Q. You may state what *appearances* support that conclusion?

A. Well we first measured the diameter of the stump and ex-

amined the same thoroughly and found that when the tree fell on the south side of the stump the tree had broken of something like three or four inches down in the stump; [page 139.] on the north side we found that it had broken off something like three or four inches in the log. On examination of the log we found that it corresponded with the stump in that particular.

Q. How was the tree cut to fall—which sides were chopped into?

A. Well it was something near the east and west sides—not exactly east and west—it was chopped to fall up or down the hill. The chip was taken from the east and west sides.

Q. About how wide was the chip?

A. Well it was what you would call about a twelve inch chip.

Q. How wide on the north and south sides was the space between the two cuts where the tree broke when it fell?

A. The stump showed a break on the north side of ten inches on the south side eight inches.

Q. Was any *examinatioj* of the stump and log made by you and the other present for evidence of corner marks?

A. Yes sir.

Q. With what result?

A. We found none.

Q. Was the bark on or off the log amd stump?

A. The bark was off the stump and log.

Q. Where did the beech stump stamd with reference to the lynn and lower poplar?

A. The beech was between the popllar stump and the lynn shell

Q. Did you or any one in your presence *invcstigage* a depression in the ground about 16 feet south east from the lower poplar stump to ascertain whether any tree had ever grown there and if so what examination was made and what conclusion did you arrive at?

A. We made an examination of the depression and found no evidence that any tree had stood there.

Q. Did you make any excavation or dig into, the ground and if so to what depth and extent?

page 140.] A. We dug into the ground in several places in the depression and as to the depth of the excavations I *couldent* say as I made no note. The area of the excavations would cover six or eight square feet, we dug in *sevark* places around, that is over an area that would six or eight feet on each side.

Q. Were there any poplar roots lying in the *dression* when you were there?

A. No sir. I *didnt* see any.

Q. Where did you first meet Mr. Dixon (*Herefofore* spelled Dickson) or V. A. Wilder?

A. At Wayne.

Q. At what time or when?

A. I don't recollect whether I met him on May 21st or not—I think it was on the 22nd. at the railroad station at Wayne.

Q. Were they strangers to you at the time?

A. They were.

Q. Were you paid for your time and expenses in going over to Race Fork and back and if so by whom?

A. Yes sir I was paid by Mr. Wilder.

Q. Did you at the time know anything about the present suit or what the controversies or contentions were?

A. I had heard of the suit, but *dident* know anything about the *controversys* and contentions.

Q. Were you in any way interested in what you might find or fail to find as a result of your examination of the premises referred to on Race fork?

A. I had not interest in the matter.

Q. How long have you lived in a timber country or been acquainted with trees and timber?

A. I was raised in a timber country.

page 141.] CROSS EXAMINATION

By Mr. Campbell.

Q. On the supposition that a poplar tree grew and afterwards uprooted at the depression you examined for poplar roots, how long after such fall would you expect roots of that tree to remain

A. I *couldent* state.

Q. You say that your excavation were in in the *prepression* could you expect to find any roots of the *uptirned* tree in the depression even though it had fallen in a comparatively recent date?

A. The outer edge of the depression would be the proper place or some roots might have broken off in the center—they might pull out and they might break off.

Q. Ordinarily how deep would you expect to fined the hole of an upturned tree immediately after its fall?

A. I have seen them different depths as to the different kind of trees I *couldent* state.

Q. If any roots were broken off under the tree as it stood and the part left in the hole, if they were poplar roots would not they decay very *radily* and leave no trace of their former existence

A. I believe they would.

Q. If a poplar should upturn in soil like that—where you saw this depression, how deep would ordinarily expect that hole to be when it was first made?

A. I cant state.

Q. Would it not in your opinion be three or four feet?

A. I don't think it would be three or four feet but to my knowledge as to upturned trees I would two or two and a half feet would be more like it.

Q. Can one tell a direction in which a tree fell after the tree is rotted and gone?

A. I could not.

Q. Does not there always appear a pile of dirt which was left on one side of the hole, by the decayed roots or stump and would that not indicate to you most certainly that the tree fell in that direction from the hole?

page 142.]

A. Yes sir there is generally a pile of dirt left which would indicate that it fell out in that direction.

Q. Did you notice that this depression on which side of the hole there was any elevation or pile of dirt?

A. I did not.

Q. *Didnt* you notice at the lower edge of the depression there was still plainly *visable* a small elevation of earth, rising *slightly* above the surrounding ground?

A. No sir I did not.

Q. Do you mean to say that there was no such elevation?

A. Around the depression as far as I noticed was all about the same at the time I *was* there the ground was in cultivation, had *be* plowed over some several times I suppose.

Q. Will the hole made by an uprooted tree gradually fill up from plowing of the ground and washing by heavy rains and freezing and thawing of the ground?

A. It would and this depression was a very slight one.

Q. Did your excavations disclose the fact that the hole had been filled or that it was ever deeper than the way you first saw it?

A. I *couldent* say.

Q. Was the surrounding ground at this depression or on a hill side

A. It was on a hill side.

Q. Would you expect a hole made by an upturned tree as well as the dirt piled on the one edge of the decayed stump and roots, to soon disappear from a rich loamy hill side upon the ground being cultivated from year to year?

A. It would disappear leaving only a slight depression and as to dirt pile up it would be removed by cultivation.

page 143.] Q. Did you notice that the grain on the wood in the poplar stump you examined was almost straight grained while that of the poplar log you referred to was very much twisted?

A. I did not.

Q. Did you think to make any comparison of the grain of the stump and log?

A. I did not.

Q. Does the *but* end of that log point up or down the drain

A. The *but* end points up the drain.

Q. Did that tree in your opinion fall up or down the hill?

A. My opinion it fell down the hill.

Q. How do you account for the fact that the *but* end of that log is as high or higher *or* the creek than the poplar stump you mentioned?

A. I don't know that it is higher.

Q. Supposing that tree fell down the hill if there were no trees below it to check its fall would expect the tree to jump a distance *from* the stump, especially after the trunk of the *tree* had passed level of the stump

A. Yes sir the tree would naturally jump.

Q. How far would you expect the *but* of this tree to fall away from the stump if the tree fell down hill and was unobstructed in its fall?

Objected to by the defendant King.

Q. *It* that tree was fifty or seventy five feet tall, clear of limbs and when it fell it was clear of obstructions, in my opinion that tree would have jumped as the ground lays at that particular *pojnt* ten or twelve foot.

RE-DIRECT EXAMINATION

Byn Judge *stiles*

Q. Did you find any poplar roots or evidence of poplar roots *or evidence of poplar roots* within a *feew* around the edge of that depression?

A. I don't believe we did.

page 144.] Q. Do trees often fall out by the roots where they grow in deep soil where the roots may take a firm hold on the ground or rather in thin stony soil?

A. In loose soil I would think generally they would pull out

of ground and in clay and close soil I think they would often break

EXAMINED

By the Commissioner.

Q. Describe that log lying in the drain as to its length and *whther* or not there are any limbs on it?

A. It is to my best impression about twenty feet and has no limbs on it. I never *moticed* the lower end of it.

And further this deponent saith not.

B. MILLS

Witness claims 3 days and 68 miles.

page 145.] Resumed the taking of these depositions at Cattlettsburg Kentucky, this the 21st. day of August, by consent and agreement.

Present the same attorneys as on yesterday.

THOMAS BOGGESS a witness introduced by the defendant H. C. King after being first duly sworn upon oath *testifese* as *follws:*—

EXAMINED

By Judge Stiles.

Q. State your age, residence and occupation?

A. Age 73 years, residence Ashland Kentucky and by occupation a civil engineer.

Q. Are you acquainted with the country along the Tug Fork of Sandy River in Mingo County formerly Logan County, West Virginia, in the neighborhood of Thacker Creek?

A. Yes sir.

Q. When did you first become acquainted with that neighborhood and that creek

A. About the year 1874 or 1875.

Q. Did you ever have any business in that neighborhood or do any surveying there at about that time, if so state what that business was?

A. At that time I was looking for coal; I did no surveying until after the year 1891.

Q. While looking for coal or about that time did you come

into communication with many of the people living on or in the neighborhood of Thacker Creek?

A. I remained some days on what was called Ben Creek—near Thacker

Q. Did you pass up or down Thacker Creek during that period?

A. I went up Thacker Creek from the river to near the head of the creek.

Q. Did you learn from people of that country or any of them whether Thacker Creek had previously been known

page 146.] by some other name and if so what did you learn concerning the same?

Objected to by contesting defendants.

A. I was told by the citizens that it had been formerly called Turkey Creek.

Q. Did the citizens you refer to live in that neighborhood?

A. Yes sir.

Q. Were any of the among the older inhabitants of the country?

A. I think so I cant call to mind who told me—that is *there* names. but I got my information about the coal and timber from the oldest men in the neighborhood; I talked to them because they were acquainted.

Q. Was it in the course of this talk and enquiry about the coal and timber resources and the country that you learned what had been the former name of the creek?

A. Yes sir.

Q. Did you have any business transactions with any of the people on Thacker Creek or along the river or other creeks in that neighborhood, concerning coal or timber or land?

A. I took options on some timber and considerable coal in that vicinity and along the river and on Ben Creek, I don't remember that I took any on Thacker.

Q. Were these transactions and negotiations for the same and other timber and lands had with a considerable number of people in that locality?

A. It was with comparatively few and I don't call to mind the name of any one except Mr. Hatfield—the man I stayed with who lived up on Ben Creek.

Contesting defendants here move to strike out all of the *testi-* of the witness.

CROSS EXAMINATION

By Mr. Campbell

Q. Do you know whether or not more than one citizen told you that Thacker Creek was formerly known as Turkey Creek

A. No I don't call that to mind at all. I only

page 147.] learned that incidentally in talking about matters in the country there.

Q. Did you hear this story on Ben Creek or on Thacker Creek?

A. On Ben Creek.

Q. Do you know whether the person who gave you that information is now living or dead?

A. I do not know.

RE-EXAMINED

By Judge Stiles.

Q. How old a man was this man Hatfield apparently at the time you were there in 1874 or 1875?

A. I *wouldent* think he was over twenty-eight or thirty years old or maybe less. He was just recently married and had went to housekeeping and they said he was the best housekeeper in the country and that is the reason I went there.

Q. On what part of Ben Creek did he live.

A. My recollection is that it was near the forks of Ben Creek.

Q. You heard mention of this name by other people in that neighborhood whose names you do not recall?

A. Yes. I dont recall the names of any other person who told me about still it was talked in common conversation about the county.

Q. Do you remember whether any of the other people that spoke of it were old people at that time?

A. No sir I do not.

And further this deponent saith not

THOMAS BOGGESS.

Witness claims 1 day.

page 148.] By consent the further taking of these depositions is continued until Friday August 29th, 1902. at the same place.

J. T. GRAHAM
Commissioner

Met this 29th. day of August 1902, at the office of the commissioner. Present. Attorneys for the contesting defendants and Judge Stiles attorney for the defendant H. C. King.

W. L. WILSON, a witness introduced by the defendant H. C. King after being first duly sworn upon oath testified as follows:

EXAMINED

By Judge Stiles.

Q. State your age, residence and occupation?

A. Thirty years old, Ceredo, Wayne County, West Virginia and by occupation, farmer and lumberman.

Q. What other occupations have you or have you had?

A. I have been a surveyor.

Q. How long have you been a surveyor?

A. About eleven years.

Q. What experience have you had as a surveyor, particularly in retracing or examining old surveys and in examining corned trees of surveys?

A. I have had considerable experience in retracing old lines and examining old marked corners. It has been off and on all the time—of course I *havent* put in solid time at it; I have examined them all my life; long before I was a surveyor I have examined them

Q. What official position have you held at any time?

A. I was County Surveyor of Wayne County and was a member of the State Legislature, and am yet.

Q. How long have you been engaged in the lumber or timber business or have been connected with timbering operations?

A. Ever since I believe on the 9th. day of August 1893, when I cut my first saw log.

page 149.] Q. Did you during the past spring go to the Race Fork of Knox Creek to where one Daniel Justice lives, on the right hand fork and examine certain stumps and the neighborhood around them, if so state when, and who were present and how you came to make the examination?

A. Yes sir I think it was some time in May—the 23rd. day of May I went there. Mr. Dixon and Mills and Bromley and Dan Justice was there I think and some other man I dont recollect what his name was. Mr. Wilder left a card with my brother requesting that he wanted to see me up here—at the hotel at Huntington—The Florentine Hotel, and I *dident* see him at the Florentine but I met him at the hotel at Kenova and he stated that he wanted me to go Knox Creek to examine some corners.

Q. What *acquaintence* if any, had you with Colonel Wilder, prior to that time?

A. That was about the first *acquaintence* I ever had with him.

Q. Who was *you* brother that you referred to?

A. It was Ben Wilson, I think of Ceredo.

Q. What stumps did you examine at the place above mentioned on Race Fork?

A. The stumps most particularly examined was a poplar and a lynn standing on a hill side, about 500 feet up a drain from Dan Justice's house.

Q. Can you identify them with any stumps shown on the plat filed by W. C. Reddy, with his report in this case?

A. The stumps seem to be in the same position relative to each other as shown on the map that I made of the stumps.

Q. Who took you to the stumps *that* you examined?

A. Dan Justice was the man that showed the stumps to me.

Q. Describe the lynn stump?

A. The lynn stump was—seemed to have been an old hollow lynn with thickest shell on the upper side. I sup-
[page 150.] pose it is about three feet across and decayed down to the surface of the ground, practically to the surface.

Q. Did you make any examination in the ground around the old stump to see whether you could find any evidences or indications of a sugar tree having grown in the vicinity, if so what examination did you make and what did you find or fail to find?

A. Yes sir I made an examination and *dident* find any indications that anything had ever growed around there at all except the lynn. We dug around there within two or three feet of the stump and *dident* find anything but lynn roots.

Q. Did you find any lynn roots?

A. Yes sir.

Q. Were they attached to and did they constitute a part of the stump?

A. They did.

Q. On which side of the stump did you dig or did you dig all around it?

A. We dug practically all around it.

Q. Were the other persons that you have mentioned—Mills, Bromley, Dixon and Justice and the other person whose name you do not recall, all present at the time?

A. Yes sir they were all present.

Q. What did you dig with?

A. With a mattock.

Q. Were you satisfied as the result of your examination whether or not a sugar tree or any other tree had at any time stood in close proximity to the lynn stump and what was *you* conclusion?

A. There were no indications whatever of any other tree having stood there.

Q. What was the nearest tree of any considerable size of which you found any indications.

A. It is a beech as near as I can tell 20 feet dis-
page 151.] tance from the *the* lynn.

Q. How much of your life time have you spent in a timber country.

A. I was raised in the woods.

Q. Are you familiar with the different kinds of wood and timber such as you found growing on the Race Fork of Knox Creek?

A. Yes sir I am.

Q. Is that the same kind of timber you were raised in?

A. There are one are two varieties grow there that dont grow where I was raised viz. cucumber.

Q. Did you at the time mentioned notice any make any examination of a depression in the ground about sixteen feet, some what south-east of the lower poplar stump?

A. The depression South 21 east 16 feet from poplar stump. No. 1 we made an examination of.

Q. For what purpose and with what result?

A. We did it to ascertain what kind of a tree growed there and we *couldent* find anything that indicated that a tree ever did grow there.

Q. Did *yoi* dig into the ground in and around the depression?

A. I did. We found no roots of any kind.

Q. Describe the lower poplar stump called Poplar Stump No. 1 *at* to its size and the way the tree appeared to have been cut?

A. Well it was a stump thirty five inches in diameter and seemed to have been cut by a left handed chopper to fall South 73½ East or North 73½ West. and the tree had broke in falling—on the North side ten inches at the stump and on the South side eight inches. The *heighth* of the stump is 44 inches on the South side and 44 inches on the North side; on the East side it

is 50 inches and on the West 32 inches. The stump is burnt some all over except on the South side.

Q. Did you find the log that came from that stump?

A. Yes sir there is a log in the hollow below the stump from all the indications, without doubt must have come from that stump.

page 152.] Q. What were some of the indications you noticed which showed that the log came from the stump in question?

A. Well the first—the part of the tree that broke in falling was of the same thickness as that on the stump, and the notches chopped by the chopper in falling the tree was same *same* depth as these chopped in the stump and the splinters on the log showed that they had been pulled out of the same stump and the log was of the same diameter of the stump.

Q. Was there any hole in the stump to indicate that the splinters on the log had been pulled out in falling?

Objected to by contesting defendants.

A. Yes sir there was a hole in the stump that corresponded by measurement to a splinter that was on the end of the log

Q. Did you examine the hill-side on either side of the hollow to see whether there were any other stumps from which the log mentioned could have come, if so what did find?

A. I examined the hill-side as far around as I could see from this poplar stump No. 1 that we have been talking about and I *dident* see any stump that this log had come from except this stump No. 1.

Q. Could you see to the upper edge of the clearing on either side?

A. You could see a *goods* ways up—I don't know whether it was to the upper edge or not but I think it was.

Q. Was the clearing plowed and cultivated?

A. It was in corn around, about six inches high.

Q. Did you make any examination of the log near the *but* end and of the stump to see whether you could find anything to

indicate whether the tree had ever been marked as a corner tree, if so what conclusion did you reach?

A. There were no indications that the tree had

page 153.] ever been marked.

Q. If the tree had been marked as a corner tree on the north side would the marks have been chopped out in cutting down the tree?

A. I think not; at least two marks would have remained.

Q. If it had been marked on the East Side was it so cut that those marks would have been chopped out in cutting down the tree, assuming that the hacks were of the usual distance apart.

A. One mark might have remained but the whole thing might have been chopped out.

Q. What was the width of the cut or of the chip in cutting down the tree on each side?

A. It was a notch twelve inches wide cut in the tree in cutting it down.

Q. Was the bark still on the log at the *but?*

A. No sir.

Q. If the tree had been marked through the bark and into the wood if marked as a corner tree, would the marks be *visable* on the outside of the log after the bark had been removed?

A. There should be some indications; I never knew a tree to completely heal that was cut through the bark.

Q. About how far did these stumps stand from the right hand fork of Race Fork?

A. About 620 feet, or about 37 rods.

Q. Was there any water flowing in the drain or hollow when you were there?

A. I *couldent* say; It is a small drain and the water would only flow in in very wet weather.

Q. Is it what you would properly term a branch?

A. No sir it is what I term a small ravine.

Q. Did you observe the situation of the country and char-

acter of the ground around the mouth of that ravine and a little distance down the creek therefrom?

A. Yes sir I did.

Q. The call in the patent and survey of the Morris 500,000 acre grant from the four white oaks on the North-West bank of Knox Creek to the South-west corner of the grant, is west 3840 poles, which is twelve miles, Mr. Stone makes the line he ran from the four white oaks to the stumps you have described about seven miles, being nearly five miles short of the distance, did you discover anything in the situation of those stumps and the surrounding neighborhood to indicate that a surveyor would stop at that locality instead of running out the full distance, or instead of stopping at the creek if not attempting to run that particular distance?

page 154.]

A. As to the situation of these corners that is a very poor place I dont see anything *it* that—there was lots of other places just as good. They were situated up on a kind of a steep hill side.

Q. Was it timbered along the creek, where this line would have crossed?

A. Yes it was timbered along the creek.

Q. Was there timber *beyong* this clearing up to the top of the ridge?

A. There was timber sb far as I could see. I *dident* go to the top of the ridge.

Q. Was the space between the mouth of the hollow and the creek adapted to the location of camping place, deseribe that place.

A. Why the creek is kind of flat along there, I should say that it was.

Q. I mean on the point north of the mouth of the drain?

A. I think it is all kind of rough until you get down to the branch and it *wouldent* be adapted for a camping place I dont think.

Q. If there had been a quantity of sugar tree roots about a peck or such matter loose about edge of that lynn stump you

have spoken of or in the immediate vicinity of it at the time you made the examination do you think it would have been possible for them to escape your search and notice?

A. If they had been placed there by nature, they could not.

page 155.] CROSS-EXAMINATION.

By Mr. Campbell.

Q. You said in your examination in chief, that you had *had considerabl* experience in retracing old lines and examining old marked corners, state what old surveys you have re-run?

A. I run some of the old surveys of what is called the Savage Grant.

Q. How many lines of that survey did you retrace?

A. That would be pretty hard for me to tell—several though and at different times. This survey was made between 1767 and 1772.

I have retraced several surveys in Boone and Raleigh Counties but I dont know the names of them.

Q. How long were you surveying in Raleigh County?

A. In Raleigh and Boone Counties, it is all together, I commenced therein April of one year and worked a good portion of that summer and fall and a part of the next spring.

Q. For whom were you doing that work?

A. It was principally for the Bowman Lumber Company.

Q. Was it on more than one survey that you were at work?

A. Yes sir.

Q. What was the size of the survey or surveys?

A. I *couldent* tell you how many acres there was in them; there was one line that was seven miles long I recollect that.

Q. How many surveys were involved in your work?

A. I *couldent* tell you.

Q. How old were the surveys?

A. I *couldent* tell you how old they was I never tried to recol-

lect anything about it; they dated back I think probably about 1800.

Q. Did you find any marked corners or marked line trees?

A. Yes sir.

Q. Did you block them and count the annulations?

A. We had one blocked there, I *dident* do it my-

page 156.] self, and counted it.

Q. Did you find and block any corner trees or line trees on the Savage Grant?

A. I never blocked a tree on the Savage Grant.

Q. What experience have you had in blocking marked corner trees and line trees?

A. I have blocked some several but I hardly ever find anything when I get in there, the trees generally shows sufficient from the outside.

Q. Those you blocked and found no marks on in the inside of the wood did you find marks on the bark on the outside?

A. There would generally be a scar or bruise on the outside and we *couldent* tell whether it was a mark or not and we would cut in to see if we could find the hack.

Q. Did you ever block a tree and find a hack on the inside of the wood?

A. Yes sir.

Q. How many and how old were they?

A. I dont know that I ever saw but two trees blocked in my life that we found the hacks on the inside, about the age I *couldent* tell you anything about that.

Q. How many have you blocked that showed hacks in the bark but none in the wood?

A. None, if it showed it in the bark you *wouldent* have to notch it to see them.

Q. Why did you block the two in which you did find the marks?

A. Because the marks *wasent* definite enough on the outside.

Q. Why did you block those in which no marks were found?

A. I never blocked a tree unless there was some sign of it.

Q. How many have you blocked having signs on the outside of the bark and having none on the inside of the wood?

Objected to by defendant King.

A. Well some several I *couldent* tell you how many. It is very common to cut into a tree that way.

page 157.] Q. Did you ever peel the bark off of a marked poplar corner tree to determine whether there was any indication of hacks on the outer wood lying immediately under the bark.

Objected to by defendant King.

A. No sir I never did.

Q. Did you ever peel any other kind of a marked corner or line tree to determine whether there would be any indication in the wood of the hacks, after the marks were fifty years of age?

A. I have seen chestnut oaks peeled and there was generally a kind of a "snerl", or something to indicate the marks. About defects in the wood of which I spoke I have noticed that in running a saw mill. I have seen in sawing logs one of these snearls you speak of and upon sawing in you would find a little notch some times six or eight inches from the outside.

Q. How old were the marks on the chestnut oak you saw peeled?

A. I dont know.

Q. Where the sawing of the log disclosed a mark on the inside of the timber was it made by a score from an ax or was it where a chip or notch had been cut out?

A. I have seen it both where it was made from a single lick and where a chip and notch had been cut out?

Q. What kind of wood was that?

A. I have noticed it in most all kinds of wood.

Q. Do you remember an instance of a poplar where the marks were *beyong* fifty years of age?

A. I have seen the marks in the poplar but dont recollect anything about the age.

Q. Are you sure in your opinion that a single ax score will be

indicated in any manner on the outer wood after the wood has grown over on the outside of the score?

A. There might be cases when it *wouldent* be shown, but I dont know of any.

page 158.] Q. Was there any bark on the poplar stump from which in your opinion the log in the drain was cut?

A. No.

Q. Was the end of the log you examined scorched and burned?

A. I dont think that it was, if it was it was very slight.

Q. How long in your opinion had the tree been cut?

A. From two to three years.

Q. Had it fallen up or down the hill.

A. It had fallen down the hill—down in the drain.

Q. How many poplar logs did you find in the drain?

A. There some two or three old poplar logs there but I never noticed them?

Q. Was the *but* end of that log you examined up the drain?

A. Yes sir it was.

Q. Where was the upper end of the log with reference to a line drawn from the poplar stump mentioned across at right angles to the creek or hollow?

A. It was probably fifteen feet down the hollow from that.

Q. Are sure of that, did you measure to see?

A. No sir I *dident* measure it.

Q. Dont you know that the end of the log is above such line?

A. No sir.

Q. Have you had much experience in felling timber?

A. I have had considerable experience?

Q. How far, ordinarily would a poplar tree of that size, falling down the hill, such as you found there that day, if not obstructed in its fall jump away from the stump?

A. Objected to by defendant King.

A. From six to twenty feet.

page 159.] Q. Did you observe the stumps of any trees in the course of the fall of this poplar?

A. No sir.

Q. You said you examined for other poplar stumps and found none from which this log came from except the one you mentioned, did you go out and over the ground, or did you stand at or in the vicinity of the stump mentioned and simply look around?

A. Why we stood there at the stump and looked around as far as we could see and *didcnt* see anything.

Q. Did you observe that the grain of the poplar stump was almost straight and that the grain of the poplar log you have mentioned was very much twisted?

A. I did not.

Q. In one place you say that the poplar stump referred to was about 500 feet from the Race Fork and in another about 620 feet, did you measure the distance from the stump to the creek?

A. I measured the distance from the stump south to the creek and it was 623 feet, but that is not the closest point to the creek, the nearest point to the creek is about the mouth of the drain at Justices house.

Q. The form of question and answer this morning puts you as saying that you dug in and around the depression in the ground about *sixtn* feet from the poplar stump, do you mean to say that you dug both inside of the depression and on the outside of the depression?

A. I meant that we dug in the depression and in the edges of it.

Q. How long after the falling of the poplar tree by upturning by the root would you expect to find undecayed portions of the root in the ground?

A. Fifteen years would probably wipe it out.

Q. How long after a sugar tree dies would you expect to find evidence of the stump or roots in the ground?

A. I should say fifteen years.

page 160.] Q. Would not a sugar tree decay much sooner than leaving no evidence of its existence?

A. If the tree was uprooted it would but if it was chopped down it *wouldent*.

Q. Did you notice the knoll at and below the mouth of the drain at Da[illegible] Justice's house containing on the top a flat place of about one quarter of an acre which was enclosed and planted in garden stuff when you were there?

A. I never noticed it.

Q. Would not a knoll of that description and within from thirty or fifty feet of a spring in the drain be an ideal place for a *sanging* camp?

Objected to by defendant King.

A. I never noticed the knoll of it is as you said it would.

Q. When you said this morning "I think it is all kind of rough until you get down to the branch and it *wouldent* be adapted for a camping place I don't think" in making that answer you *dident* have in your mind the above described knoll did you at that point?

A. I *dident* have it then nor *havent* got it in my mind yet.

Q. Were you ever at what is known as the Muzzle Corner of the land in controversy?

A. Not that I know of.

Q. If James Taylor started on the north-west bank of Knox Creek at the alleged location of the four white oak corner, described as the south-east corner of the grant and intended to run North 33 East 21 miles, if he stopped 7 miles short of that distance what would you expect to find in the neighborhood where he did stop in the form of any sort of topography that he would or had stopped there?

Objected to by defendant King.

A. I would expect to find a marked corner or some natural object that he *couldent* cross, I reckon, is the only way that I know to answer that question.

page 161.] Q. Are you interested in any timber on the waters of Knox Creek? If so where does it stand, and when and from whom did you acquire that interest?

A. I have no timber there, I have been talking about trading for some timber.

RE-EXAMINATION.

Q. Had you ever been on Knox Creek or talked about trading for any timber on Knox Creek prior to your visit there on the 23rd. of last May?

A. No *sit* it has been since then.

Q. Have you ever invested any money in that neighborhood in any way?

A. No sir.

Q. About how far is poplar stump No. 1 from the bottom of the drain below it?

A. My recollection is it is about twenty feet, although I *dident* measure it.

Q. About what is the distance to the drain at the point where you think the tree fell when cut?

A. I don't think it is more than twenty-five feet, something like that.

Q. What is the character of the bank on the opposite side, is it steep or is it a level place?

A. I think it is steep.

Q. If the tree was of ordinary height or of such height as it appeared to be from the stump and log and fell down the hill toward the drain would it or not fall top first into the opposite bank.

A. It would be possible for it to do it.

Q. If in falling the top of the tree struck into the bank on the opposite side of the drain what effect, if any, would that probably have upon the tendency of the tree to jump away from the stump, would it prevent it in doing so or not?

page 162.]

A. If the tree would strike into the bank just right it would prevent it from jumping down the hill.

Q. Which will last longer after having been cut down, or having died, without uprooting, a sugar tree or a lynn?

A. A lynn stump will last the longest.

Q. Will or will not, there be traces of wood of any kind of a tree on the ground where it rotted or of roots in the ground many years after it has gone to total decay and lost its form?

A. Very often there are indication and sometimes there is not. Sometimes there will be holes in the ground surrounded by bark that you can tell the kind of wood.

Q. Where a mark of an ax has gone through bark of a tree and into the wood would you or not expect to *fing* on the surface of the tree and next to the bark some irregularity or scar where the cut was made as long as the cut would be visable in the exterior bark?

A. I should think there ought to be.

Q. You say you have never been at the Muzzle Corner of the Morris Grant, have you ever been at the four white oaks?

A. I dont know that I was ever at any of them.

Q. Did you at the time of your visit to *and* examination of the stump near Dan Justices dig up from the neighborhood of the lynn stump any wood or root?

A. Yes we dug up a root and brought with us.

Q. I hand you a piece of forked root about a foot long with the *initialw* W. L. W., C. V. B., and B. M., written thereon in ink, and ask you if you identify the same as the piece you brought away?

A. That is the same root we brought away.

Q. What kind of wood it it?

A. It is lynn, to the best of my judgment.

page 163.] Q. Was all the rotten wood you found of the same character as this root—found at that place?

A. It was all that we found around this lynn stump of the same character.

Q. Was this root loose or fast to the stump?

A. It was fast to the stump.

Here the root *refered* to by the witness is filed as evidence with the commissioner.

RE-CROSS-EXAMINATION.

Q. If a lynn root demonstrates that a sugar tree did not grow in the same vicinity why *dident* you bring with you a gum or beech root to demonstrates that no poplar grew in that locality?

Objected to by the defendant King.

A. Well because we *dident* want to is the only way I know to answer that. The lynn was simply brought here to show that the stump it came from was a lynn and not a sugar tree.

And further this deponent saith not.

W. L. WILSON.

page 164.] Resumed taking depositions for the defendant King at Iaeger, McDowell County, West Virginia, this the 3rd. day of September 1902 pursuant to agreement.

Present: Attorneys for the contesting defendants and Judge Stiles attorney for the defendant H. C. King.

G. A. DESKINS, a witness introduced by the defendant H. C. King after being first duly sworn upon oath testified as follows:

EXAMINED

By Judge Stiles.

Q. State your age, residence and occupation?

Age 52 years, residence I live on Huffs Creek, Wyoming County, West Virginia, occupation farmer.

Q. Did you ever live on Tug River in what is now Mingo County?

A. I did.

Q. At what place?

A. At the mouth of the creek called Turkey Creek.

Q. About how long ago was that?

A. About 35 years ago.

Q. With whom were living at the time, if with any one?

A. With my father.

Q. Is your father now living?

A. No sir.

Q. Did he own or claim the land at the mouth of Turkey Creek where you were living?

A. Yes sir.

Q. While you were living at the mouth of that creek did you learn from your father or any other old persons what was the repute or tradition as to one circumstances from which the creek acquired the name Turkey Creek?

A. I heard my father say that some of the old Baileys and Lesters used to be camped there and hunting, and right across on the other side of a little swag they killed a big turkey and roasted it there and eat it and then that creek was always called Turkey Creek.

page 165.]

Q. Did your father point out the place where it was alleged the turkey was killed?

A. Yes sir he looked and pointed right across to the swag on the point.

Q. Do you know what Baileys *of* Lesters he referred to?

A. Yes sir. It was Eli Bailey and old Abner Lester.

Q. What was your fathers name?

A. John W. Deskins.

Q. Was any one present besides yourself and your father, if you remember?

A. Yes sir there was two or three of us boys by we were there at work—I think we were fixing the fence. My father said here boys is where the old Baileys and Lesters were camped and killed the big turkey on the swag over there and roasted and eat it.

Q. How long ago did this conversation occur?

A. About 35 years ago.

Contesting defendants move to *str8ke* out the *foregoung* testimony of the witness.

And further this deponent saith not.

G. A. DESKINS.

1 day and 30 miles.

page 166.] G. L. COUNTS, a witness introduced by the defendant King after being first duly sworn upon oath testified as follows:

EXAMINED

By Judge Stiles.

Q. State your age, residence and occupation?

A. Age 39 years, reside at Iaeger, West Virginia, am a lawyer.

Q. Where have you lived prior to your residence in Iaeger?

A. In Buchanan County, Virginia.

Q. What official position, if any have you occupied in that county?

A. I was Judge of the County Court of that county, for one term—six years.

Q. Are you acquainted with the Race Fork of Knox Creek in that county?

A. Yes sir very well.

Q. Do you know where Daniel Justice lives on that creek?

A. Yes sir.

Q. Did you during the past spring examine some stumps situate on the side of the hollow where Dan Justice lives back of his house and about 500 feet from the mouth of that hollow, if so state when made that examination and who were present and what stumps and ground you investigated?

A. I was there last spring and looked at some stumps there Lawrence Auvil, C. L. Dixon and Watkins Blankenship were with me; Dan Justice was there that day but I don't think he was up there when we looked at the stumps and L. G. Stacey and Crockett Christian were also along. I looked at some stumps there with these parties. I saw two poplar stumps standing

on the hill side to the west of a little drain that comes in there; these two poplar stumps were I suppose 50 or 60 feet apart, I *dident* measure the distance,; south of a center of a line drawn between these two stumps I saw an old stump that was decayed —the shell of a stump. In looking at that stump I took it to be a lynn.

Q. Do you remember what month and day it was when you were there.

page 167.] A. I don't remember the day but I think it was in May, I don't remember the day of the month.

Q. Were you there with the parties mentioned on more than one occasion?

A. No sir I was only there once.

Q. Did you or those with you dig into the ground around the lynn stump for the purpose of determining the character and of determining whether any other tree had at any time stood in this immediate neighborhood, if so state what you did and what you found *pr* failed to find in that respect?

A. I dug down in to the roots of the old stump and I think all the others did and we got some of the pieces out of the stump and looked at it in order to see if we could tell the kind of wood it was. I *dident* find anything but some old pieces of the roots of that stump was all I saw.

Q. Did you find any remains of a sugar tree in the neighborhood of that lynn stump or anything to indicate that a sugar tree had ever stood close by the lynn or within two or three feet of it?

A. I *dident* see any indications of anything but the one stump so far as I examined.

Q. You may describe the appearance of that lynn stump?

A. It was more of an old shell of a stump, looked to me like it might have been two feet and half across and was nearly decayed. The only *think* that I could form any opinion about it was from the *toots* of it, I examined the roots.

Q. Was your attention called to a depression in the ground

about 16 feet south or south-east of the lower of the two poplar stumps that you saw?

A. I dont think that I looked at that.

Q. Did you notice a log lying in the hollow below the lower poplar stump?

page 168.] A. Yes sir I looked at a poplar log laying in drain—along the drain in the side of it like.

Q. Did you make any comparison of the log with the poplar stump above it to determine whether the log had come from the stump and was part of the tree that grew from the stump, if so state what you ascertained?

A. I looked at the log, then I looked at the stump standing up above it a little on the hill and examined the way it had been cut and also the way the log had been cut and then there was a plug or splinter on the stump that had drawn out of the log as it fell from the stump and I looked at the log lying down below it and I found that there was a place in the log to correspond with the splinter that had been drawn out of it and I concluded that that log had come from that stump.

Q. Was there any bark on the log or stump?

A. The bark was off the log, I don't remember looking at the bottom part of the stump and don't remember whether there was any bark on that or not.

Q. Do you know how corner trees of surveys are usually marked?

A. They are usually marked with a hack; three hacks.

Q. Did you inspect the log or either of the poplar stumps to see if there were evidences of the trees having been marked as corner trees?

A. I looked on the stumps and I *dident* see any evidence of corner marks; there was some hacks up along the log like they had been make in taking the bark off.

Q. Were those numerous and occurring all along the log?

A. Yes sir they occurred all along the log.

Q. Did you discover any scars or ridges or defects in the

surface of the log that would indicate that it had anciently marked as a corned?

A. No sir I did not.

Q. Was there any water flowing in the hollow

page 169.] at the time you were there?

A. There was a little water in it I think.

Q. In what portion of the drain did the water appear?

A. There was just a little drain of water running down that hollow there was all that I saw.

Q. Would that hollow be ordinarily or properly termed a branch of Knox Creek?

A. It might be called I reckon a little branch.

Q. About how long is it?

A. I don't know I was never up that hollow—not very far though.

Q. Was the ground around these stumps in cultivation?

A. Yes sir it was planted in corn when I was there.

Q. How high was the corn when you were there?

A. I suppose it was up about knee-high as well as I recollect.

Q. Did you look up the hill side above the log in the drain to see whether there were any other large stumps from which it might have come?

A. I *dident* see any. I looked around there.

Contesting defendants here move to strike out the foregoing testimony of the witness.

CROSS-EXAMINATION

None.

G. L. COUNTS.

1 day.

page 170.] MRS. MARGARET MANNS, a witness for the defendant King after being first duly sworn upon oath testified as follows.

EXAMINED

By Judge Stiles.

Q. State where you live?

A. I live in Nigger branch about two miles and a half from Iaeger, McDowell County, W. Va.

Q. What is your age?

A. I am 51 years old.

Q. Who was your father?

A. Noah Burchfield was my father.

Q. Did you ever know Nathan Robinet?

A. Yes sir.

Q. What relation, if any was he to you?

A. He was my great grandfather.

Q. Is he living?

A. No sir he is dead.

Q. About how long ago did he die and at what age?

A. As well as I remember about twenty years ago; I have heard folks say that he was about 115 years old at the time of his death, I never heard him say that I know of.

Objected to by the contesting defendants to so much of the answer as relates to what other people said concerning his age.

Q. Were the people whom you hear speak of his age members of his family or relatives of the family or strangers?

A. They were relatives.

Q. What was his appearance as to age the last time you saw him?

A. He appeared to be a very old man.

Q. What was his mental condition at that time as indicating his age?

A. He was in good mind until the last two or three years of his life when he had no mind at all.

Q. Where did he live during the earlier part of his life or of the time that you know him?

page 171.] A. When I first knew him he lived down near Thacker and stayed about among his children and people he was acquainted with.

Q. Do you know from family history or tradition when he settled in this country?

A. No I don't, he settled in this country but I *couldent* tell you when, it was when my grandmother was very small.

Q. Do you know where he settled?

A. No I *couldenet* just tell you it was some where down on Peter Creek or below here.

Q. Did you know of his living on Camp Creek of Knox?

A. Well I know of him living on Camp Creek with his son and I think he lived on Camp Creek years ago—he lived on Knox Creek some *wheres* I don't know whether it was on Camp Creek or not.

Q. Was he a relative on your father side or on your mothers?

A. On my mothers.

Q. Do you know anything of a little ax or hatchet that your father once had, if so you may state what you know about it?

Objected to by contesting defendants.

A. Well he had on—when I could first recollect, it was a tomahawk and he told me that old Jackey Reed made it for him before he was married and he said he used it in surveying.

Contesting defendants move to strike out all testimony relating to *hat* her father said as to who made the ax or what he used it for.

Q. You may describe it?

Objected to by contesting defendants.

A. It was about an inch and a half or an inch and three *wuarters* wide, it was a very small little thing and was three or four inches long I should *gues*, may be a little longer. It was just in the *shap* of a little ax, we always called it an ax, it was a very nice shaped tomahawk.

page 172.] Q. Did ever use it yourself or see it very often?

A. I had it at my house for a good many years and used it quite *ofter*?

Q. What became of it if you know?

A. It was washed away when that Dry Fork flood was—when our house was washed away.

Q. Did you *loose* much of your property,—house-hold goods in that flood, state the extent of the *disruction* to your property where *your* were then living?

Objected to by contesting defendants as immaterial.

A. Every thing we had was washed away. We *dient* save a thing all of our house-hold goods were washed away.

Q. How did that little ax or hatchet come to be at your house?

A. One of my little boys took a liking to it and my father gave it to him because he liked it.

Q. Did you ever know, years ago, of your fathers being engaged in surveying with any of the Harmons?

Objected to by the contesting defendants.

A. I heard him speak of it but it was before my recollection—before I was born I reckon. I have heard him talk of it often.

Contesting defendants move to strike out the answer.

Q. How long ago did you first hear him speak of it to the best of your recollection?

Objected to by the contesting defendants.

A. Ever since I can remember.

Q. Where did you live when you were a child?

A. I lived up here on Dry Fork in Wyoming County, and at different places, we moved about so much.

Contesting defendants move to strike out all of the foregoing testimony and each and every answer of the witness.

CROSS-EXAMINATION

None.

MARGART MANNS.

1 day and 5 miles.

page 173.] D. L. AUVIL, a witness introduced by the *defendat* King after being first duly sworn upon oath testified as follows:

EXAMINED

By Judge Stiles.

Q. State your age, residence and occupation?

A. Age 27 years, reside Iaeger, West Virginia, and am a lawyer.

Q. Did you go to the Race Fork of Knox Creek Buchannan County Virginia, during the past spring for the purpose of examining some stumps and the surrounding premises in the drain or hollow of the Race Fork where Dan Justice lives and if so state when you went and who were with you or present at the time? upon the ground?

A. I did on the 11 day of May 1902. Judge G. L. Counts, C. L. Dixon, J. N. W. Blankenship and Squire Stacy were present at the time on the ground.

Q. Do you remember whether a man by the name of Christian was also present?

A. He was—Crocket Christian.

Q. What stumps or remains of stumps did you and those with you examine?

A. We examined two poplar stumps and the remains of a stump which we found to be lynn.

Q. Did you notice at the time a large beech stump between the poplars near the lynn stump?

A. I did.

Q. Did you make any explorations of the lynn stump and the ground around it for the purpose of ascertaining whether any sugar tree had ever stood at that point or in that immediate locality, if so what investigation did you make and what conclusion did you reach?

A. I investigated the hole where the lynn had *rooted* out thoroughly and found no evidence of any sugar tree having stood there at all.

Q. Did you dig around in the ground with any implement, if so what kind did you use?

page 174.] A. I did using an ax.

Q. Did you notice at that time or was your attention called to a hollow or depression in the ground about 16 feet nearly south from the *power* poplar stump?

A. My attention was called to a slight *depressi9n* in the ground about 15 or 16 feet from the lower poplar stump.

Q. Did you examine in or around that depression for the purpose discovering whether a tree had ever been uprooted there and if it had what kind of a tree it was and if so did you find?

A. I made no particular examination at that time and saw nothing indicating that a tree had stood there save the slight depression in the ground.

Q. Did make any examination of a log lying in the bottom of the drain or hollow some 55 feet below the lower poplar stump, in connection with the *ssaid* stump to see if the log had come from the stump and had been a part of the tree that grew from the stump and if so what conclusion did you reach?

A. In a small drain 55 feet below the stump I found a poplar log and after examining the log and stump carefully I came to the conclusion that the log came from the lower stump.

Q. What appearances did you note on the stump and log that would support such a conclusion?

A. The diameter of the stump and log were practically the same. There was a shake in the—I mean a wind shake, on the upper side near to the out side of the stump. I also found a corresponding shake in the log. In falling the tree had drawn a wedge out of the stump on one side and out of the log on the other side. The wedges correspond in size and location and taking these facts together I come to the conclusion that the log came from that particular stump.

page 175.] Q. Did you find cavities in the end of the stump and log corresponding to the wedges that had been pulled out?

Object4d to by contesting defendants as leading.

A. I did.

Q. Did you look over the hill sides in the neighborhood 5*to* see whether there were any other stump from which this log could have come?

A. Not at that time.

Q. Did you at any time?

A. Since the 11th. day of May I have been on the ground again and while I did not examine particularly as to that fact I covered the ground in the vicinity of those stumps several times and found no stump that I thought the log could have come from.

Q. Have you had any experience in examining or measuring or inspecting logs and timber or had any connection with timbering operations, if so to what extent?

A. I have had considerable experience in measuring and estimating timber. I have scaled on mills and estimated some in the woods.

Q. Were you born and brought up in the neighborhood of this place and in a timber country?

A. I was.

Q. Upon what other occasion, if any, were you at the stumps and in the locality mentioned and with whom?

A. Mr. Reddy and myself were at the stumps some time during last month.

Q. What was Mr. Reddy doing?

A. He was running some lines in the locality of the stumps.

Q. Did he run lines between the different stumps you have mentioned so as to determine their location relatively to each other?

A. He did.

Q. What part, if any, did you take in the surveying ?

A. I acted as rear chainman.

Q. Who was the other chainman?

A. Mr. C. W. Campbell, here part of the time and Levi Lester the rest of the time.

page 176.] Q. Do you know whether Mr. Reddy was executing an order of survey in this case at that time?

A. I did not see a copy of the order but I was informed that he was executing an order of survey in the case.

Q. Were the various stumps that is, the two poplar stumps, the lynn and beech stumps somewhat between them and the depression in the ground near the lower poplar stump, to which Mr. Reddy with your assistance made measurements and ran lines the same stumps and the same depression in the ground that you examined when you were there upon the occasion that you first mentioned—about the 11th of May?

A. They were the same.

Q. Was any examination made of the poplar log or poplar stump from which it came by you or those with you upon your first visit thereto to see if any evidences could be found of the tree having been marked as corner tree, if so state whether or not you found any such evidences?

A. We examined the tree, and stump in question for the purpose of ascertaining whether or not the tree had been marked as corner tree and we found no evidence of any such marking.

Q. Are you acquainted with Noah Burchfield?

A. I am.

Q. Is he a relative of *your* and if so in what degree?

A. He is my grandfather.

Q. Do you know of his having had a small ax or hatchet or tomahawk for a good many years back?

A. About twelve years ago he gave a small ax to Willie—my youngest brother. I do not remember having seen it prior to that time.

Q. Describe it as to size and shape and tell what became of it if you know?

A. It was shaped *loke* an ax and would weigh from about

three quarters of a pound, the blade being about one and a half or two inches wide. It was not a polished ax and bore evidence of having been made in the black-smith shops of this country. It was lost. I have been informed in what was known as the June flood 1901 on Dry Fork in McDowell County.

page 177.]

Q. Was your brother Willie living with his mother on Dry Fork at that time?

A. He was.

Q. Did you live with your grandfather when you were a small boy? or did you live some distance from him?

A. I lived near to him a few short periods of time but the principal part of the time I lived considerable distance from him. I never lived with him.

CROSS-EXAMINATION

By Mr. Campbell.

Q. Did you and those with you on the 11th of May last while examining the stumps *referred* to also notice on examining a sugar tree stump near what you call the lower poplar stump?

A. No sir we did not.

Q. Did you notice surveyor Reddy examine a sugar stump eighteen or twenty inches in diameter and standing near what we call the lower poplar stump?

A. I did.

Q. Did you observe his measuring its diameter and distance and bearing from the lower poplar stump?

A. He measured the distance between the two stumps, measured the diameter of the sugar tree stump and took the bearing from the lower poplar stump to the sugar tree stump, but I do not remember the measurements and did not notice the bearing.

Q. You said you examined the lower poplar stump and the log in the drain for evidences of corner marks how did you examine either of them?

A. We made close observation of the log in the drain also of the stump.

Q. Did you do anything more than inspect them with your eyes on the outside of the log and stump?

page 178.] A. We did not.

Q. Did surveyor Reddy examine the stump and log with you and take measurements of the diameter of the stump and log and the appearance of the *but* end of the log and the top poplar stump?

A. He did.

Q. Did you hear him say while at the poplar log and after the examination and measurement that he could not tell whether that log came from that stump or not?

Objected to by defendant King.

A. I think I heard him make some such remark.

Q. Do you remerber who was present with you and Reddy when you were *examing* the poplar stump and poplar log?

A. Yourself, and Levi Lester, I think, Sam McInturff was on the ground but whether he was immediately present when the measurements were made I don't remember.

Q. How often have you known of your grandfather Noah Burchfield to move his habitation?

A. I can't say how often, though he shifts his abode *ever* three or four years.

Q. At what different points in *McDowle, Wyoning* and at different points have you known him to reside?

A. In McDowell at Perryville, Dial Rock, Bartley, and on the head of Logan Pole about eight miles from Iaeger. In Wyoming at Baileysville, and various other places in the vicinity of Baileysville with Baileysville as the post office. Also at *Lynclon* in said county.

Q. When Mr. Reddy while standing at the corner designated as two Birches, hickory and a white oak, on a little rocky flat across from Dan Justice's gate told his flagman to go and place

his flag where the triple lynn corner formerly stood where did the flagman go with reference to the cliff of rock projecting out of the ground above and to the west of the two poplars stumps you have referred to?

page 179.] A. My recollection is he went a short distance above the cliff but not very far.

Q. In measuring a line between the two corners named did you and the other chainman pass to the right or left of that cliff in going up to the triple corner?

A. We passed to the left.

Q. The cliff of *reock* referred to and the poplar stumps referred to were on your right up to the triple lynn corner were they not?

A. They were.

RE-EXAMINATION.

Q. Was the sugar tree stump mentioned upon *you* cross examination and to which surveyor Reddy made measurements more *that* about fourteen or fifteen inches in diameter?

A. I don't remember the measurement of the diameter of the stump but think it was more than fifteen inches.

Q. After your two, examinations of the poplar log and stump state whether or not you were yourself satisfied that the two had been part of the same tree or whether you had any doubt on that subject?

Objected to by contesting defendants.

A. There is no question in my mind but that the log in the drain came from the lower poplar stump.

Q. Would there be differences in the diameters of a large poplar log taken across the same in different directions if the log was not absolutely round?

A. There would.

And further this deponent saith not.

D. L. Auvil.

1 day.

Continued the taking of depositions at William-
page 180.] son, W. Va. this the 4th. day of September 1902,
pursuant to agreement:

Present the same counsel as heretofore.

H. K. SHUMATE, a witness introduced by the defendant King after being first duly sworn upon oath testified as follows:

EXAMINED

By Judge Stiles.

H. K. SMUMATE, a witness introduced by the defendants King after being first duly sworn upon oath testified as follows.

Q. State your residence and occupation?

A. Residence Williamson, Mingo County, West Virginia, and by occupation a lawyer.

Q. Were you at one time counsel for Henry C. King in this cause and in sundry other causes pending in the United States Courts, of the then District of West Virginia?

A. Yes sir I was.

Q. As such did you ever go to the beginning corner of the Morris 500,000 acre grant commonly spoken of as the "Muzzle corner on Muzzle Creek in Wyoming County, if so when and with whom?

A. Yes sir I was at one time at what purported to be the beginning corner of the 500,000 acre survey on Muzzle Creek in Wyoming County, about the year 1895 I think, I cannot give the month but it was in the spring of the year I think. There were with me at the time Judge M. F. Stiles, Colonel V. A. Wilder and two surveyors—W. D. Sell and W. C. Reddy.

Q. What trees if any of those called for in the survey did you find at the point you visited?

A. I found standing one poplar tree and a poplar stump that had been cut pretty high—probably eight or ten feet from the ground and two chestnut trees lying on the ground, both

had been blown down apparently, one of them many years before from its appearance and the other but a few years.

Q. Did you make examination of the trees or page 181.] for corner marks and if so state what you did?

A. We examined the standing tree to some extent and made a very careful examination of one of the chestnut *tree* that had blown down—the one that had last fallen. The tree had been sawed or cut off some eight or ten feet from the root of it. I was sitting on that portion of the tree and discovered what appeared to be the end of a hack that was shown by a shiver or portion of the tree having split out when it fell, the sliver having come from some five or six inches deep from the outside of the tree. I then examined the siliver that had come out from where I had seen what I supposed to be the end of a hack and found indications of the same on the inner edge of it and appeared to be a curl running from it to the surface. I trimmed—or some of us did, this sliver and counted as near as we could the annual [illegible]ths from the outside of the sliver to where the hack appeared and as I recollect now there appeared to be about ninety annulations; we then concluded to block the tree and I went to Mr. William Rife's, who lived a short distance away, and procured a cross cut saw and ax and returned and sawed a block out of the tree or stump some four feet from the root and propably four feet above that. We sawed out a block of the tree probably near one half of it and which portion included in the mark. There appeared after we got the block out a wind shake six or eight inches from the outside of the tree and I put something in the wind shake and it opened at that place and there was found on the inner part of the block, after being split open three clear and distinct hacks, some six or eight inches apart. We then shortened the block preserving the three hacks—tacked it together as it was before I split it apart and it was taken away. I saw the same block afterwards on trial of the case of King against Mullins and

others, in the Circuit Court of the United States at Parkersburg.

Q. Did the hacks in the tree as it originally stood correspond with any line of the three surveys of which the Muzzle Corner is a corner, if so what one if you remember?

page 182.]

Objected to by contesting defendants.

A. My recollection now is that it was facing the direction when the tree was standing of a common line between the 500,000 acre survey and the 320,000 acre survey calling running to four white oaks on Knox Creek. I *couldent* be certain of that, there was another call that might possibly have faced, which was a common line, between the 320,000 and a 480,000 acre survey, known as the Robert Morris survey, running to a corner called for as a gap in the Indian Ridge about four miles from the mouth of another fork of Tug River.

Q. Did you at the time you and the others present, satisfy yourselves of those two lines the marks in that block faced?

Objected to by contesting defendants.

A. My impression is that we were satisfied that they faced in the direction of the line running to the four white oaks on the bank of Knox Creek, a south-west course.

Contesting defendant move to strike out so much of the two foregoing answers as gives opinion and conclusions reached; and as relates to what lines and what surveys the marks spoken of indicated.

Q. By my last question I wished to know whether at the time you took out the block you determined on which side of the tree it had been marked and are now uncertain what you determined at that time as to the direction or whether you were uncertain at the time?

Objected to by contesting defendants.

A. We determined it at the time how the tree stood and which way the marks pointed but I am not now certain what our determination was, whether it was on the south-east course or south-west course from that tree.

page 183.] Q. Did you make any examination of what was the north side of that tree to see whether it had ever been barked on the north side if so state what your examination disclosed?

Objected to by contesting defendants.

A. Yes sir we after determining what part of the tree would face to the north, we examined it closely splitting it up into small parcels to see if it had been marked as a corner tree on the north side at the same time these other marks appear to have been made. We found no indication of any such marks.

Contesting defendants move to strike out the foregoing answer.

Q. Did you take a block out of the north side of the chestnut log to a depth sufficient to discover any marks that had been made on the north side of that tree at or near the time the marks that you discovered on the other side were made?

Objected to by contesting defendants.

A. After taking out the block which had the three hacks upon it we then immediately after determining the side facing the north took out a block that would include the side facing the north and examined it pretty thoroughly, with the result that I have just stated.

Q. How far into the tree did we saw in taking out the block on the north side of the chestnut and to what depth towards the heart of the tree did the block reach?

A. We sawed into and beyond the center of the tree, blocking out probably three fourths of the tree perhaps more—left but little of it.

Q. On the other tree standing and the stump-poplar stump, did you discover any indications of corner marks on the north side?

A. The standing tree as I remember now, had no marks on the north side. The stump of the other poplar had been blocked seemed like many years before, I believe in two places, I am not sure, but at least it had been blocked in one page 184.] place, but I found no marks on the north *north* side of this stump.

Q. Were you present at the June 1894 term of the Circuit of Wyoming County, when this case or rather the case of State of West Virginia against Henry C. King, came up before the Court for action.

A. Yes sir I was there.

Q. Were you present at the next term or two thereafter?

A. Yes sir I dont think I missed a term of the Circuit Court of Wyoming County for three or four years, about that time.

Q. What other attorneys were present beside yourself and myself (Stiles) and the attorney for the State participating in the proceedings concerning this case, if you remember?

A. I can't remember the term of the court now in which the case mentioned came up for hearing but at the time it came up for reference, as I remember,—the term after the case the suit was instituted, Mr. John A. Sheppard was there. Judge R. T. W. Duke of *Charlottsville*, Virginia, was there. I think Mr. C. M. Turley of Logan was there, Mr. C. W. Campbell I am not sure was there at the first term but he was there when the *matte*5 came up in its earliest stages, if not at the first term he was at the next. I don't remember any other *foreigh* attorneys now.

Q. Do you remember whether or not *Eugene* Ellicott was present?

A. Yes sir I think he was, that is my recollection.

Q. Do you know what person or interests he was representing at the time?

A. He was representing the interests of Stuart Wood of Philadelphia.

Q. In what way did the attorneys you have mentioned participate in the case and what course did they wish taken if you remember?

A. They were opposing the claim of Henry C. King, is about the best way I can express it. They were desirous at the time of having the case dismissed, denying the jurisdiction of that court to entertain the proceedings that had been instituted.

Q. Did any of these gentlemen make any argu-
page 185.] ment to the court in opposition to the Courts entertaining jurisdiction or upon any other question relating to the case?

A. Yes sir as I recollect each one of them, unless it was Mr. Turley, I am not sure about that, engaged in the argument of the case and appeared before the court.

Q. Do you know for whom Judge Duke was general counsel in this State?

A. Yes sir he was counsel for Kountze Brothers of New York. One of the members of the firm was Luther Kountze.

Q. Do you know whether or not as the result of any objections or the interference of the gentlemen mentioned or any of them, the proceedings in the case were delayed against the wish and protest of counsel for King?

A. My *recolection* is by their united efforts it was delayed.

Counsel for contesting defendants here object to each and all of the foregoing questions relating to the presence of Judge Duke and others at the Circuit Court of Wyoming County and move to strike out each and all of the answers thereto.

CROSS-EXAMINATION

By Mr. Sheppard.

Q. Did you find any marks on the standing poplar tree?

A. It appears to me that we did.

Q. Can you not be more certain about it?

A. I can only state that that is my recollection about it.

Q. Describe them?

A. My recollection now is that on the part of the tree facing south—it might have been south-east or south-west, there were some perceptible marks on the tree, about I would say from four to six feet from the ground where it would be usually marked by a surveyor. They were as I remember now very

page 186.] indistinct—pretty well worn out by the weather.

Q. How many marks and on how many sides of the tree?

A. I cannot now recollect except that it was on the side facing the hill side, which would be south-east or south-west and I don't remember now the number of them, can't say whether I saw them or not but am rather inclined to think that I *could* not discover three clear marks.

Q. Had the marks gone through the bark?

A. That I could not tell—don't know that I examined specially to that matter.

Q. Which sides of the poplar stump had been blocked?

A. I *couldent* state now that I recollect clearly about that.

Q. Were the marks found by you in the chestnut tree discernable on the outside of the tree?

A. I first discovered it on the inside. I had my knife in my hand and was picking dirt out of the tree where this sliver had come out and by following that to the outside of the tree, the bark being off I could discover a slight "snearl." I found no bark that was marked although we looked for it.

Q. My question is were the ax marks discernable on the outside of the chestnut tree?

A. Only as I stated by what has been termed as a "snearl."

Q. Was that *visable* on the outer annulation of the tree?

A. It was and appeared through to where the end of the chip was.

Q. What I want to know is where these *descernable* ax marks on the out side of the outer annulation of the tree.

A. None unless you would *tern* the snearl an ax mark.

Q. How did you determine which was the north side of that down chestnut?

A. We had a compass there and determined north and south from that. When the tree had blown down some of the roots had remained in the ground and there had been left to them slivers out of the tree and we could easily determine from the trunk of the tree where those slivers came from and had no difficulty in ascertaining in what direction the tree faced when it was standing.

page 187.]

Q. Could you determine from the body of the tree where the slivers would fit?

A. There was no difficulty at all about it as I remember there were only two—one of which *wwas* attached to the root and the other lying on the ground—the one on the ground being much larger than the other. It was on this last one that we counted the annulations before blocking the tree.

Q. In which side of the tree was the standing sliver from—I mean the upper side or the lower side as the tree was lying?

A. I don't remember.

Q. Was the standing sliver on the north or south side of the tree?

A. My recollection now is it was neither on the north or south but was more on the west side.

Q. Did the standing sliver come from that part of the tree that you took out in the block?

A. No sir it was from the sliver that was lying on the ground that we took out the first block.

Q. Had the tree turned in falling?

A. I *couldent* answer that—I don't remember of noticing that.

Q. Describe the location of those trees?

A. The chestnut that we blocked—the stump of it was lying down pointed as if it had fallen from *and easterly* direction and a little further up the hill than the standing poplar. The other chestnut that appeared to have been down many years was west of this chestnut and I think maybe a little further up the hill

and had fallen rather away from the other trees some what eastward. The *pollar* standing near the branch. All of the trees were standing or had stood on an elevation or bench some twenty or thirty steps from Muzzle Creek and probably twenty or thirty feet higher than Muzzle creek and on Muzzle Creek about a half a mile from the forks where William Riffe lives. There was a small drain came down the hill side just above them. There was none of them more than twenty feet from the other. I think that a circle of twenty feet in diameter would include *tham* all.

page 188.]

RE-EXAMINATION.

Q. State whether or not the ascertainment of which was the north and *whaich* was the south-west and south east sides of the chestnut tree that you blocked was made by the surveyors concurrently with yourself at the time or by yourself alone?

A. I think we all took a hand in it looking at the compass and seeing the courses, I know I did.

Q. Have you ever done any surveying yourself?

A. I have done considerable surveying.

Q. Have you had considerable experience in examining corner marks and marked trees?

A. I have done more or less of it for the past thirty five years.

Q. Does the mark made in a tree by an ax in marking a corner tree usually give some indication upon the surface of the tree beneath the bank after the hack has *grone* over for a good many years?

A. As far as my experience has gone there would be something like a scar on the outside of the tree, some times it would be difficult to tell it from a knot. It is very slight though, it *doesnt* show as a cut would show—more of protuberance.

Q. Is the ax mark in the wood beneath usually indicated by such a protuberance or irregularity on the surface of the tree beneath the bark after the bark has been removed?

A. I *couldent* answer certainly as to that because I have not examined many trees with reference to that matter under the bark, but have observed a kind of a protuberance or wrinkle over where the hacks appeared in the tree.

page 189.] RE-CROSS-EXAMINATION.

Q. At this point counsel for contesting defendants demands the production of the block taken from the down chestnut for further cross examination of this witness.

The defendant by counsel says that he sent for the block some time ago and will submit it to the commissioner as soon as he is able to do so. The block at his last information was in the custody of the Clerk of the United States Circuit Court for the Western District of Virginia.

The contesting defendants reserve the right to further cross examine the witness when the block is produced.

And further this deponent saith not.

H. K. SHUMATE.

page 190.] It is ordered that these preceedings be now adjourned until tomorrow morning.

J. T. GRAHAM.
Commissioner.

Met this the 5th day of September 1902 pursuant to adjournment on yesterday.

Present: Counsel for the contesting defendants, and Judge Stiles attorney for the defendant King.

AGATHA BROWN, a witness introduced by the defendant H. C. King after being first duly sworn upon oath testified as follow:

EXAMINED

By Judge Stiles.

Q. What is your age?

A. 64 years.

Q. Where do you live?

A. In Kanawha County, W. Va.

Q. Did you ever live in Logan and what is now Mingo County?

A. Yes sir I was born and raised in Logan County on Guyandotte River.

Q. How long did you live in Logan County?

A. All my life except the last two years, not quite two years now since I went to Kanawha.

Q. Have you been during your life time acquainted with the various creeks flowing into Guyandotte and Sandy Rivers in Logan County, prior to the formation of Mingo County?

A. Yes sir.

Q. What creeks have you lived on in Logan County at different *tis* during your life?

A. Gilbert Creek, and Horse Pen, Big Huff and Elk Creeks.

Q. Did you in your early life have occasion to travel over the country from Sandy River to Guyandotte as far down Sandy River as Beech Creek and below?

page 191.] A. Yes sir and as far as Mate Creek.

Q. How did it happen that you came to travel around that portion of the country?

A. Well father would send me to take off the produce and *sang* and to go to the store and I did the principal part of the trading and take off what we had to sell; there was no boys then large enough to do the trading and father always sent me.

Q. Who was your father?

A. Eli Trent.

Q. What was his occupation or business?

A. Well he run a farm and hunted.

Q. Where did you generally go to do your trading?

A. Well I come here to Matewan and to the mouth of Big Huffs Creek them were the only stores they had around here at that time.

Q. Did you during your early life or prior to the institution of the suits by and against Mr. King, learn by reputation or tradition whether or not some of the creeks in the neighborhood you have mentioned used to be known in early days by names different *f* the names by which you now know them?

Objected to by contesting defendants.

A. Yes sir.

Q. Were you acquainted with the older people living in the county around the creeks you have mentioned?

A. Yes sir.

Q. Did you hear them speak of the names of the creeks having been changed?

A. Yes sir.

Q. You may state what creeks you learned in the manner I have mentioned had undergone a change of name and what the former names of the creeks were?

Objected to by contesting defendants.

page 192.] A. Well Big Bluffs creek used to be called Cane Creek, Buffalo Creek I understood used to be called Elk Creek, Gilbert Creek used to be called Big War Creek, that is about all I recollect on that side Thacker Creek used to be called Turkey Creek.

Q. Do you remember any other creeks on the Sandy side that have been changed?

A. Yes sir, the Trent Branch as it was called in the beginning but now it is called the Andy Branch.

Q. Where is the Andy Branch?

Objected to by contesting defendants.

A. It is *is* on yon side of Tug River just about a mile from the mouth of Alum Creek that runs in on this side of the river.

Q. And where is Thacker Creek with reference to some of the other creeks?

A. It is above Mate Creek.

Q. Did you learn how Thacker Creek came to be called Thacker?

A. Well an old gentleman before fathers time or when he was a boy, by the name of Thacker settled on that creek and put up a mill and it was called Thacker Creek by his settling there, it was before that time called Turkey Creek. I learned this from father and others.

Q. Is your father now living?

A. No sir.

Q. How long has he been dead and about how old was he at the time of his death?

A. It is upwards of four year now since father died. I think he was about 89 year old when he died as well as I recollect.

Q. Are any of the other old people that you heard speak of the change of the names of these creeks, particularly of Thacker Creek now living?

A. *No* that I know of.

page 193.] Contesting defendants move to strike out the evidence of this witness.

CROSS-EXAMINATION

By Mr. Shepperd.

Q. Why did you never testify in this case until after your father died?

A. I was never called on to testify—father and others were but I *wasent.*

Q. Where did your father testify?

A. At Parkersburg. He was there about twice I believe.

Q. He told you what you know about it?

A. Yes sir him and others. I heard him and others talk about it long before there was any law suits about the land in latter days.

Q. You have testified that this talk was heard by you before these King suits were brought, tell us now when these *suit* were brought?

A. I dont know exactly how long you men have been a lawing over it.

Q. All you know about that is what some one told you *isent* it?

A. Yes. I heard others talking about the law suit and I *wasent* concerned in it—no witness or nothing.

Q. Who kept the store at the mouth of Huff Creek?

A. Lewis McDonald put the first store at the mouth of Huff Creek I reckon. That was the first store I was ever at and it was the only store until you got to Logan Court House.

Q. Who besides you traded at that store?

A. Everybody—I reckon the whole neighborhood so far as I know.

Q. Are any of them except you living?

A. Yes sir.

Q. Give their names?

A. Margaret Trent, older than I, Frankie Trent, Rhodes Trent, Sarah Trent, Floyd Trent, Roxie Trent and Miram Trent.

Q. Any of those people your brother or sisters?

A. I guess they are all my brothers and sisters.

page 194.] Q. So your family made up the neighborhood did it?

A. No sir I guess there were plenty in the neighborhood and there was quite a family of us and plenty of others.

Q. During what years did you trade the mouth of Huff and where did you then live?

A. We lived on Big Huff when the store was first put up—that was when I was quite small I reckon I was about eight years old. Then we moved to Gilbert Creek.

Q. You remember when Huff Creek was called Cane Creek do you?

A. No sir I dont remember when it was called Cane Creek but I remember that people told me that it was once called Cane Creek.

Q. That was the general reputation in the neighborhood of Huff Creek when you were about eight years old was it?

A. *O* yes that was the general reputation as long ago as I can remember that Huff Creek was once called Cane Creek.

Q. And that is still the reputation in that neigborhood is it not?

A. Yes sir.

Q. The fact that Gilbert Creek was once called War Creek was also a matter of general repute in the neighborhood of Gilbert Creek when you were young, is that true?

A. Yes sir.

Q. That reputation still exists in the neighborhood of Gilbert Creek does it not?

A. Yes sir.

Q. Do you know from that reputation or tradition that existed in the neighborhood of Gilbert Creek when you were young and that you say still exists there what caused the name of the creek to be changed from War to Gilbert?

A. My understanding was that in the time of the Indians and the whites that the Indians killed a man on that creek by the name of Gilbert and that is *waht* it took its name Gilbert from.

Q. Was that a well known tradition among the
page 195.] older people in that neighborhood when you were a girl?

A. Yes sir. They would tell us about the Indians being there *whe* we were small and it would scare us.

Q. Do you know the place where Gilbert as said to have been killed by the Indians?

A. Yes sir, where they told us it was just above the mouth of the Twisted Gun Gap Fork—which is called the Twisted Gun Gap now, by a little lick.

Q. Who told you that and pointed out the place?

A. Father and many others. And father said that old Mr. Lusk who was with Gilbert when he was killed told him that that is where Gilbert as killed. I dont know whether father was there with Lusk or not but father told me that Lusk told him that there is where Gilbert was killed and he himself, Lusk, was shot in the hand by the Indians and captured and carried off by them.

Q. In fact Mrs. Brown the tradition of the killing of Gilbert by the Indians on that creek and the creek taking its name from the circumstance is the most widely known of all of the traditions connected with the early history of this country is it not?

Objected by the defendant King.

A. Yes sir so far as I know.

Q. Now Mrs. Brown can you tell me that there has at any time in your recollection, existed among the people living in the neighborhood of Thacker Creek a reputation that Thacker Creek was

once called Turkey Creek? I mean was it generally talked among the people then living in the neighborhood of Thacker Creek?

A. Yes sir. It has always been the talk among the people as far back as I can recollect.

Q. At what time of your life did you live in the neighborhood of Thacker Creek?

A. I was about twenty-one when I used to come to Matewan and trade.

page 196.] Q. Was it then that you learned that the reputation of Thacker and Turkey Creek?

A. Yes sir and before I ever come there to trade.

Q. About what was your age?

A. About twenty-one I guess.

Q. Where did you then live?

A. On Gilbert Creek.

Q. Where on Gilbert?

A. On the Twisted Gun Gap Fork.

Q. Did you ever live any closer to Thacker Creek than that?

A. I reckon some, I lived at the mouth of Ben Creek.

Q. How old were you when you lived at the mouth of Ben Creek?

A. I guess I was about twenty-two, close around there.

Q. Who lived at the mouth of Thacker Creek then?

A. I *dont* know who lived there then. Warren Alderson kept store just down below there between there and the mouth of Mate Creek.

Q. Is that the store you came to trade when you said you came to Matewan?

A. Yes sir, it was to Warren Alderson's store that I came to trade

Q. Then you were about twenty-one years old when you first came to Aldersons store?

A. Yes sir.

Q. And as I understand you this reputation about Thacker being once called Turkey Creek existed in that neighborhood at

that time and you learned it from the people living at that time, is that correct?

A. Yes sir.

Q. Now tell me who were living in that neighborhood that told you?

A. Father told me, Andy Hatfield told me, Humphrey Trent told me, William Riffe and many others.

Q. Are any of them living?

page 197.] A. No sir I reckon not.

Q. Tell me some living person except Mr. King's witnesses, you have heard say that Thacker Creek was once called Turkey Creek

A. Well Uncle Fred Trent said it and I guess he is about all the one living

Q. When and where did Fredrick Trent tell you that?

A. Why at his home on Gilbert Creek.

Q. Is he the same Fredrick Trent who testified in the case of King against Justice and others tried in the Circuit Court of the United State for the Western District of Virginia, at Abongdon in 1899?

A. Yes sir I guess he is.

Q. Give me the name of another living person?

A. I dont know that I can.

Q. How many living people can you name who you heard talk of the reputation or tradition of the killing of Gilbert and the naming of Gilbert Creek, outside of the witnesses?

A. I cant tell you who or how many, because that is a well known thing and was in my early days that Gilbert was killed there.

Q. Have you heard a great many or just a few speak of that reputation?

A. A great many

Q. Where did your father live at the time you say he told you about Thacker Creek being called Turkey Creek?

A. We lived right on the Twisted Gun Gap Fork of Gilbert, we owned that farm at that time and me and father come to

Warren Alderson's store and *and* he *couldent* get no coffee there and we went on up the river to Peter Creek to a little store and and there we got it. And while we were on the way we went by Thacker and Father told me that that was the identical creek that was once called Turkey but was then called Thacker and told me how it come to be called Thacker, right there, and that was in 1861, just before the war.

page 198.] Q. How did he say it come to be called Thacker?

A. By this here old man Thacker moving there and making a little mill.

Q. Was Thacker living there then?

A. No sir.

Q. Did your father tell you when the Creek was called Turkey Creek I mean in what year or years?

A. He *dident* tell me in what years it was, he told me that was called Turkey Creek when he was a small boy. Father said that he used to come to mill there when Thacker had his mill and that his father—my grand father, lived on Knox Creek and he used to send him there to mill and it was called Turkey until Thacker put the mill on that creek and that it was afterwards called Thacker.

Q. Do you mean to say that your father told you that Thacker Creek was called Turkey Creek when he went to mill there when a small boy?

A. Yes sir.

Q. You know that your father testified under oath, in his life time, about this matter in the case of King against Mullins and others tried in the Federal Court at Parkersburg, West Virginia, in the year 1895 and also in 1896, do you?

A. Yes sir any how they said he did, he went there. I *wasent* present.

And further this deponent saith not.

AGATHA BROWN.

2 days and 90 miles.

ROXILENA TRENT, a witness introduced by page 199.] the defendant King after being first duly sworn upon oath testified as follows:

EXAMINED

By Judge Stiles.

Q. What relation are you to Agath Brown the last witness?

A. Sister.

Q. Where do you live and what is your age?

A. I live at Gilbert, Mingo County, West Virginia, age 43 years.

Q. How long have you lived in Mingo and what was Logan Counties

A. All my life principally.

Q. In what different places have you lived?

A. On Big Huffs Creek most of my life. Father lived up here at the mouth of Ben when I was a little girl and I dont remember much about it.

Q. Do you remember living on Twisted Gun Gap?

A. No sir I cant remember that.

Q. Are you acquainted with the creeks flowing into Guyandotte River down from Gilbert Creek up and down the river for some distance.

A. Yes sir.

Q. Are you or have you been acquainted with the creeks on Sandy River from Ben Creek up and down the river?

A. No sir I *havent.*

Q. Do you know the name of some of these creeks on the Sandy side?

A. Yes sir I have heard them.

Q. You *havent* traveled around on the Sandy River side below Ben Creek much?

A. No sir I *havent.*

Q. Have you heard of a creek that flows into Sandy River down considerable distance below Ben Creek that is called Thacker Creek?

Objected to by contesting defendants.

A. Yes sir.

Q. Have you been acquainted with some of the old people living in the neighborhood where *youm* have lived?

page 200.] A. Yes sir.

Question and answer objected to.

Q. Have you ever *hard* them prior to the last ten years speak of the different creeks and of any changes in the names of the creeks on the Sandy and Guyandotte Rivers?

Objected to by contesting defendants.

A. Yes sir I have.

Q. Did you learn from them or any of them that according reputation or tradition some of the creeks had once been known by names different from the names by which they are now known?

Objected to by contesting defendants.

A. I have.

Q. You may mention the creeks on Guyandotte River that you remember having thus learned had been known by other names and what these other names were?

A. Gilbert over here was changed I have heard—there were three names for this Gilbert, one of the names was Kettle Creek and the other name was Big War Creek. Big Huff's Creek the original name I suppose was Cane Creek, that is what I learned from my father and John Cook. And Buffalo was changed *was changed,* its original name was Big Elk I suppose.

Q. Did you ever hear or learn from any of those old people whether Thacker Creek on Sandy River was reputed to have been called by some other name before it was called Thacker?

Objected to by contesting defendants.

A. Yes sir. Father said that his first recollection that it was Turkey. Mr. Wesley Stafford told me that its original name was Sycamore and that there was a creek below there, Thacker that was called Turkey and that this Turkey and Sycamore changed names.

Q. Did you learn how Thacker Creek came to be called Thacker Creek?

A. Yes sir. My *Father* said that old Mr. Thacker

page 201.] moved up there when he was a small boy and that he put in a mill up there and his neighbors and cus-

tomers took to calling the creek after the old man Thacker.

Contesting defendants move to strike out the testimony of the witness.

CROSS-EXAMINATION

By Mr. Sheppard.

Q. Did you never live closer to Thacker Creek than Huffs Sreek?

A. I suppose I have.

Q. Have you any recollection of it?

A. Yes sir.

Q. Where?

A. At Gilbert.

Q. Do you know how many miles it is from where you live on Gilbert to Thacker Creek?

A. I *dident* live on Gilbert, I live near Gilbert Post Office. I dont know how many miles it is from there. It is about half a mile below the mouth of Gilbert.

Q. Is Wesley Stafford the same as J. W. Stafford and is he living.

A. Yes sir he is the same and he is living. He is present here. 2 days and 90 miles. ROXIE L. TRENT.

page 202.] W. A. FORSYTH, a witness introduced by the defendant King after being first duly sworn upon oath testified as follows:

EXAMINED

By Judge Stiles.

Q. State your age, residence and occupation?

A. Age 72 years, reside in Charleston, West Virginia, and generally lumber business.

Q. How long have you been engaged in business in this State?

A. About twenty-nine years.

Q. Prior to that time where did you live?

A. I moved from the city of Washington to Charleston, W. Va. I moved from old Virginia to Washington and from the State of New York to Virginia. I lived in New York until I was 40 years old and came to West Virginia in 1873.

Q. What portion of your time have you been engaged in the occupation that brought you into intimacy with timber and trees

and afforded an opportunity to become acquainted with the character, growth and decay of timber?

Objected to by *cojtesting* defendants.

A. I have more or less been acquainted with those things all my life from the time I was old enough to observe.

Q. Have you had experience and if so to what extent in clearing land of timber that where lynns and sugar trees, or what in New York is called Rock Maple, grew?

A. At the time that I was old enough to observe or from the time I was able to plow there was about half of the area of New York that was standing in native forest and a good deal of clearing was being done. Our timber was mostly beech, sugar and lynn and ash and pine. It was a general calculation that beech and sugar the stumps would rot out in ten years and lynn timber in about half of time of the hardwood. The time would vary some little for the time of the year the timber was cut but as a general rule the time was assigned as ten years for hardwood timber to rot out and about half that *thime* for the lynn.

page 203.] Q. Have you observed the relative duration of life of lynn and sugar tree stumps under like *like* conditions in this state, if so what is that result of the observation?

A. Well I have thought from my observation here in this country that hardwood timber and lynn would rot out a little sooner than it would in the northern states, that is a few years perhaps from one to two years, but I have no very accurate information on the subject but that has been my impression, for the reason that the frost has not been so continuous in this country as it is up there.

Q. How does the time required for lynn to rot out in this country compare for the time for a sugar tree to rot out according to the best of your knowledge?

A. Well I should say that a lynn would rot out in about the same proportion as to time as it does in the north. As a rule a lynn should rot out in about five years, at least it would be

pretty well decomposed in that time, while the hardwood—beech and sugar would last twice as long.

Q. Are you familiar with the tree growing in this portion of the country known as the black gum or gum?

A. From *mynoscrvation* the black gum is a very tight gum is a very close grained slow growing tree ?

Q. To what size do they ordinarily attain?

A. Well the general run is from about twelve inches to eighteen I had occesion to cut one this winter for a particular purpose that was twenty three inches.

Q. Did you have any difficulty in finding a tree of that size?

A. I looked over about 5000 acres of land before I found it. I think I found about every gum on the tract before I found it.

Contesting defendants move to strike out the testimony of the witness.

page 204.] CROSS-EXAMINATION

By Mr. Sheppard.

Q. Would your estimate of the number of years required, for a sugar tree stump to rot out be affected by the sound or unsound condition of the stump?

A. It would be affected by those conditions and it would be affected also to some extent by the time of the year the tree was *cur.*

Q. Your *extimate* of years is based upon a sound green stump is it

A. Yes sir.

Q. If the sugar tree had been decaying for such a number of years as that it had fallen away to be a mere snag and that snag dead would then fall leaving only some shells of the stump which afterwards burnt out how long *long* would say that a trace of that stump could be found?

A. If there was enough left of the stump to make a coal after it was burnt it is a well known fact, that charcoal is quite indistructible but if the stump was as you say decayed,

and burned it would perhaps leave no trace but ashes which would not last very long.

Q. Which last the longer of the hardwoods, I mean stumps?

A. Why the oak generally last the longest—chestnut is designated by some as a hardwood and by others it is not, but it last the longest. A walnut will last as long or longer than either of them.

And further this deponent saith not.

W. A. FORSYTH.

1 day.

page 205.] THOMAS M. ROBINETT, a witness introduced by the defendant H. C. King after being first duly sworn upon oath testified as follows:

EXAMINED
By Judge Stiles.

Q. State your age, residence and occupation?

A. Age 50 years, I live in McDowell County West Virginia, on War Creek below Iaeger, and am a farmer.

Q. How long have you lived in McDowell County?

A. I have lived there about twenty-six years.

Q. Prior to that where did you live, especially during your boyhood days?

A. Will along on Tug River part of the time in Pike County Kentucky part of the time, and on Camp Creek that empties into Knox Creek I lived there before I was married.

Q. Has all your life time been spent in the neighborhood of Tug River between Iaeger and Knox Creek?

A. Yes sir.

Q. Have you been acquainted with the creeks flowing into Tug River along in that neighborhood and further down the river?

A. Yes sir.

Q. Were you acquainted with the old people living in that neighborhood when you were a young man and a boy?

A. Yes sir.

Q. Did you ever hear any talk among them concerning the creeks and their names and how they had been acquired and what changes had been made etc?

Objected to by contesting defendants.

A. Yes sir.

Q. Did you ever learn during that time of any tradition that Thacker Creek had once been known by a different name

A. Yes sir.

Q. You may state what that tradition was and page 206.] when and how you learned it?

A. My Grand Pa Robinett he said that it used to be called Turkey Creek.

Contesting defendants move to strike out the foregoing answer.

Q. What was your grand father's first name?

A. His name was Nathan Robinett.

Q. Is he now living?

A. No sir he is dead.

Q. How old was he if you know at the time of his death?

A. About one hundred and fifteen years is what I am told.

Q. Who was present at the time you first heard him mention that Thacker Creek had been called Turkey Creek, if you know?

A. My father was there and my brother was there.

Q. Where did the conversation occur?

A. On Camp Creek.

Q. At whose house if any ones?

A. It was at my fathers house.

Q. About how long ago was that?

A. It was about twenty-seven or twenty eight years ago as near as I can recollect it.

Q. Where had your grandfather lived prior to that time?

A. He lived at the mouth of Barrenshe part of the time and had lived on Camp Creek of Knox.

Q. How far is the mouth of Barrenshe from the mouth of Thacker Creek

A. About three miles to the best of my recollection.

Q. What was your fathers name?

A. Addison Robinett

Q. Did you learn from your grandfather or any of those old people from what circumstance the creek took the name of Thacker, if so you may state what *ist* was?

A. Yes sir. He said that a man by the name of Thacker lived there on the creek near about the mouth or some where along there and after he lived there it took the name of Thacker after him.

page 207.]

Q. Do you knok the creek now called Turkey Creek up above Ben Creek on Tug River?

A. Yes sir.

Q. You may state whether you ever learned from old people how that creek came to be called Turkey Creek?

A. Eli Bailey told me that he killed a turkey on the creek and then they called it Turkey Creek after that.

Q. How long ago to the best of your recollection did he tell you this?

A. It has been about eighteen or nineteen years ago as well as I recollect.

Q. Did you ever hear any one else of the old settlers speak of the same matter, if so whom?

A. I have heard old Jonnie Deskins, he told me that old Eli Bailey killed a turkey there and it took its name from the killing of the turkey—that is what he said.

Q. Do you remember hearing any one else tell about it?

A. No not that I recollect of.

Q. How long ago was it that Deskins spoke of it?

A. It has been eleven or twelve or thirteen years ago right along on in there.

Q. Were Deskins and Bailey living along in that neighborhood at the time they mentioned this?

A. Yes sir they said there were Old Jonnie said that he lived at the mouth of the creek, and Old Eli Bailey was living up above there when he told me that.

Q. Are either of them now living?

A. No sir they are both dead.

Contesting defendants move to strike out the evi-
page 208.] dence of the witness and each answer therein.

CROSS-EXAMINATION

By Mr. Sheppard.

Q. How many years has your grandfather been dead?

A. About eighteen or nineteen years.

Q. When did he live on Barrenshe?

A. Well he lived on Barrenshe he said, before he lived on Camp Creek.

Q. I wanted to know what you know about it and not what some one else said? now if you know when your grandfather lived on Barrenshe tell me.

A. I *couldent* tell you.

Q. Did he tell you how old he was when he knew Thacker Creek as Turkey Creek?

A. No sir.

Q. *Dident* he say that he was a man of a family when Thacker was called Turkey?

A. Not that I recollect of.

Q. Did he not tell you at what time of his life that creek was called Turkey Creek?

A. He said it was called Turkey Creek away back before Thacker moved there

Q. Was he large enough to remember when it was called Turkey Creek or had others told him that it had originally been called Turkey Creek

A. He said that it was called that when he was a man. He said that he knew that to be called that himself.

Q. Where did he live when he knew that?

A. I *couldent* tell you that.

Q. Well about what aged man did he say he was?

A. He never said.

page 209.] Q. Well did you understand that he was an old man or just a full grown man?

Objected to by the defendant King.

A. I never understood.

Q. Do you remember hearing him say that in his *yound* days he went to Thacker's Mill on Thacker Creek?

A. He named something about the mill but I dont recollect what it was.

Q. Well he said that in his mill boy days he had carried corn to the mill there to grind did he not?

Objected to by defendant King.

A. He said that Thacker had a mill there is all that I remember.

Q. Can you not come nearer the time than you have?

A. I think not.

Q. And all you know about it is that your grandfather died eighteen or nineteen years ago at the age of 115 years and that he told you that some time in his life Thacker Creek was called Turkey Creek and it took its name Thacker from a man by that name, is that correct?

A. Yes sir.

Q. Where is your father?

A. He is dead.

Q. Where is your brother who heard this statement?

A. He lives on Peter.

Q. How many people live in the neighborhood where your grandfather lived and died?

A. I dont know.

Q. Are you acquainted in that neighborhood?

A. No I am not much acquainted where he died.

Q. How many people live in the neighborhood where he told you the story of Turkey and Thacker Creek?

page 210.] A. Why there is some several live around there.

Q. How many do you mean by several?

A. Several neighbors around.

Q. Is several three or a dozen?

A. I *dont* know how many it takes.

Q. Can you tell where that neighborhood is?

A. It is on Camp Creek.

Q. Can you give me the names of the several neighbors?

A. I can give you some of them. Ben McCoy, Zeke Blankenship, Wash Blankenship,—I believe them is about my closest neighbors around there.

Q. Well *dosent* Peyton Hurley, John Hurley, Abraham Blankenship, Harvey Blankenship, John C. Sanson and older men than you are, live in that same section and closer to Thacker Creek than where your grand father lived on Camp Creek?

A. Some of them live a little closer and some of them a little further.

Q. They are all older than you?

A. I *dont* know whether they are not

Q. Mr. Robinett if you know any thing of that neighborhood you certainly do know that Turkey Creek of Knox and the mouth of Knox where the men live whose names I have mentioned is nearer to Thacker than Camp Creek is, and if you know the men that you have mentioned you certainly must know from their appearance that they are older than you, and if you will answer these questions instead of acting as you have I will be very much obliged to you?

Defendant King moves to strike out the observation and assertion of counsel as being groundless and uncalled for and request that he confine himself to interrogatories.

Q. Do you know where the mouth of Turkey Creek of Knox is?

A. Yes sir.

page 211.] Q. Which is closer to Thacker Creek, the mouth of Knox or the mouth of Turkey Creek of Knox?

A. It would depend upon which way you travel. If you

would come up Turkey Creek and go over on to Peter Creek, if I aint mistaken that is the closest.

Q. Will you now please tell me whether Turkey Creek of Knox is closer to Thacker Creek than Camp Creek, is to Thacker?

A. It would depend on the way you would travel I would think.

Q. Is Camp Creek above or below Turkey Creek of Knox?

A. It is above.

Q. How far above?

A. It some three or four miles I *couldent* state exactly how far.

Q. *It* you start from Thacker and go up Peter Creek you would have to go past the head of Turkey Creek and cross a mountain to get on to Camp Creek would you not?

A. Yes, sir.

Q. Then Mr. Robinett it is further from Thacker to Camp Creek than it is to Turkey Creek of Knox, is it not?

A. From the head of Turkey it is the closest is my way of looking at it. The head of Turkey Creek is closer to Thacker than Camp Creek is to Thacker.

Q. How far is it from Thacker Creek to where your Grand Father lived on Camp Creek?

A. I *couldent* exactly state the distance but to the best of my knowledge it is about thirteen miles or some where about that.

Q. How far from Thacker to *to* J. C. Sansoms at the mouth of Knox?

A. I *couldent* tell you how far, point blank.

Q. I suppose you never knew or heard of Turkey being killed on any creek except the one Eli Bailey told you about, is that correct?

A. Yes I have heard men talk about killing tur-
page 212.] keys on other creeks.

Q. Did you ever kill any yourself?

A. Yes, sir.

Q. John Deskins lived at the mouth of that creek when Bailey killed the turkey did he?

A. No sir he *dident* say it that way.

Q. Where did John Deskins live when the turkey was killed?

A. He never told me where.

Q. Had he moved away from the creek, when the turkey was killed?

A. I do not know.

Q. Who was present when John Deskins told you that?

A. I think Old Jonnie's wife and me and him was all.

Q. I suppose she is dead too is she?

A. Yes sir.

Q. Where did that occur—that conversation?

A. It was up in McDowell County Jonnie Cake Creek.

Q. How far was that from Thacker Creek?

A. I guess it is near about thirty miles.

Q. How far was it from Turkey Creek?

A. I reckon it is about nine or ten miles—from Turkey to Jonny Cake Creek.

Q. What year was it that Eli Bailey told you that he killed the turkey?

A. I *couldent* state the very date. I can guess it pretty well. It has been eleven or twelve or thirteen years ago or may be a little longer.

Q. Did he tell you what aged man he was when he killed the turkey?

A. No sir.

Q. Did he say what he was doing when he killed the turkey?

A. Said he was a hunting.

Q. Did he say where he started from on the hunt?

A. No sir he *dident.*

page 213.] Q. Did he say whether he was a child or a man?

A. He never said which.

Q. Did you form any idea from his statement as to his age at the time he killed the turkey?

A. He was a very old man when he told me that. I *dident* form any particular idea, if he killed it when he was young I could form some idea for he was a very old man when he told.

Q. You seem not to know or have any idea how old Bailey

was when he killed the turkey, is this impression of mine correct?

A. I have no impression as to how old he was when he killed the turkey.

Q. And he said nothing to you to cause you to believe that he killed the turkey at any particular time of his life?

A. No sir, that I recollect of at this time.

REDIRECT EXAMINATION.

Q. Did you understand from him when he told about this that he had killed the turkey a long time before or a short time before?

Objected to by contesting defendants because the witness shows a total lack of knowledge on that subject.

A. It was a long time before.

Q. Have you lived in the neighborhood of Knox Creek or Camp Creek since you were married some twenty-five years ago, I suppose?

A. Yes, sir.

Q. How long since you lived there?

A. About twenty-eight, or nine or thirty years, some where along in there.

RE-CROSS EXAMINATION.

Q. How many Turkey Creeks are there up there in that neighborhood?

A. There aint but two that I know of.

page 214.] Q. Where do those two Turkey Creeks take their rise and where do they empty?

A. One of them empties into Knox Creek and the other into Tug River. Turkey or Knox part of it head up against Peter Creek, I *ain* certain but all of it does. Turkey Creek one prong of it head up against Ben Creek, West Virginia.

Q. Which of those two Turkey Creeks do you refer to as taking its name from the killing of a turkey on?

A. The one that is in West Virginia.

Q. Have you ever heard or known of your own knowledge of a turkey being killed on any other creek in that neighborhood?

A. Yes sir.

Q. Did you ever hear of the killing of the turkey changing the name of the creek upon which it happened?

A. No sir I *dident* hear of any change.

Q. How long since was it that you were notified that you had to give evidence in this case as to the name of Turkey Creek?

A. I was *somoned* yesterday.

Q. Was that *that* the first notice you had of the fact that you would be expected to testify in this case?

A. Yes sir.

Q. Had not notice directly or indirectly or heard any report or had any hint from your neighbors or any body else before you were summoned that you would have to testify in this case?

A. No sir I did not. I did not have any notice until yesterday.

Q. Do you know how the other turkey creek you described got its name?

A. No sir.

Q. Who served the summons on you to come here?

A. A. J. Manns.

Q. Who is A. J. Manns?

page 215.] A. Why a man by that *bame* is all I can tell you who lives up in McDowell?

Q. How did you come to know his name?

A. He told me his name.

Q. When did he tell you his name?

A. Why he told me his name about seven or eight years ago.

Q. How often have you seen him in the last seven or eight years?

A. I have seen him several times I *could dent* tell you exactly how many times.

Q. To who did you first tell what you would testify in this case?

A. I never told nobody exactly what I would testify. After I came here the lawyer Mr. Stiles asked me a few questions about

those creeks and I told him what I knowed about them.

Q. Is that the first time that you told what you would testify to in this case?

A. Yes sir.

Q. Is Mr. Stiles the first person you told what you would testify about it?

A. Yes sir.

And further this deponent saith not.

his
THOMAS × M. ROBINETT.
mark.

1 day and 90 miles.

Monday September 8th. Met at Williamson, West page 216.] Virginia, pursuant to adjournment.

Present: Counsel for contesting defendants as heretofore and S. P. Kelley, Esq., of counsel for contesting defendants.

Judge M. F. Stiles, counsel for defendant Henry C. King.

J. W. STAFFORD, a witness introduced by the defendant H. C. King, after being first duly sworn, upon oath testified as follows:

EXAMINED
By Judge Stiles.

Q. ... ...e your age, residence and occupation?

A. Age 69 years, I was born and raised near the mouth of Gilbert Creek on the Guyandotte River, I live now at the upper end of a little bottom at the mouth of Gilbert Creek—on the lower side of Gilbert Creek, and am a farmer.

Q. Have you lived all your life in what is now Logan and Mingo Counties?

A. Yes, except when I was in the war which was four years.

Q. Are you acquainted with the creeks flowing into Sandy River from this point up the river for some miles?

A. Yes to some extent.

Q. And with the creeks on Guyandotte River below Gilbert Creek?

A. Yes.

Q. Were you in your early life acquainted with the old people who lived or had lived in the country drained by the creeks that I have mentioned?

A. Yes sir. Some of the old people I have been acquainted with since boyhood.

Q. Where did your relatives—ancestors live in this country?

A. Why my father was raised on the waters of Sandy River, the old home that he was raised on is up here not far from Rawl, a little station on the railroad between here and Matewan.

Q. Did you ever hear any talk among the old people who are now dead concerning the creeks and the changes that had taken place in the names of any of the creeks or that were reputed to have taken place in the territory mentioned on Guyandotte and Sandy River?

[page 217.]

Objected to by the contesting defendants.

A. I have, some of those creeks.

Q. Did you learn or hear from them, or any of them, any tradition that the creek flowing into Sandy River some distance above here now known as Thacker Creek had at any time borne a different name?

Objected to by contesting defendants.

A. I have.

Q. State what that tradition was?

Objected to by contesting defendants.

A. The *primative* name of Thacker, if the tradition is correct, was Sycamore, and then afterwards changed to the name of Turkey Creek.

Q. By that same tradition did you learn whether any other creek had been called Turkey Creek and if so what did you learn in regard to it?

A. What is called Sycamore Creek now its *primative* name was Turkey Creek, if tradition be true.

Q. Where is the Sycamore Creek you refer to?

A. Why it is what is known by the name of Sycamore Creek at this day and time. It is a short distance above Williamson, Mingo County.

Q. Do you know a Buffalo Creek emptying into Sandy River on the West Virginia side any where below Thacker Creek?

A. I do.

Q. State about where it comes into Sandy River?

A. It is below Williamson, I just don't know the distance. I suppose some three miles or over.

Q. Did you ever know, or hear by tradition or otherwise of any other Buffalo Creek flowing into Sandy River in what is now Mingo County?

page 218.]

A. I never heard of any, if I did I don't remember it.

Q. Have you taken a special interest in times past in acquainting yourself with the names of creeks and the traditions relating to the earlier names?

Objected to by contesting defendants.

A. No I have not. All I know about the question is that these things and the relation to them has been handed down by tradition.

Q. Have you ever been across the country from Sycamore Creek to Pigeon Creek?

A. I have, some few times I don't just remember, some two or three times when I was a boy.

Q. Do you know whether in going North up Sycamore Creek you would cross Buffalo Creek?

A. It is likely a person would, I am not so positive about that but it is my opinion that you would cross the head of Buffalo.

Q. Did you ever *learn* from what circumstance Thacker Creek acquired its present name?

A. I do not know, if I ever heard I don't remember it.

Q. Did you ever hear of a man by the of Thacker living on that Creek?

Objected to by contesting defendants.

A. I have heard people that are now living make such statements.

Q. Mention some of the creeks on Guyandotte River in Mingo and Logan Counties that according to the tradition you have heard, have undergone a change in their names?

Objected to by contesting defendants.

A. Island Creek is one, Buffalo Creek of Guyandotte River is another one and what is known as Madison now used to go by another name, and Big Huff and Little Huff Creeks went by the name of Big Cane and Little Cane Creeks and *Gil-*

page 219.] *ber,* its *primative* name was Big War Creek and after that Uncle Bill Riffe in his life time told me that it went by the name of Kettle Creek, and the old man Spratt—my Grand Father I also heard him say that after the killing and scalping of Joe Gilbert that they changed its name from War Creek to Gilbert Creek.

Q. By what name did Madison Creek go according to the tradition you have mentioned?

A. By Island Creek. This I learned from my father, he got it form Doctor Hinchman, Doctor Hinchman never mentioned a thing of that kind to me. Island Creek, he said was Big Madison and what is known as Madison was Island Creek and they reversed names.

Q. How long ago did you first hear this tradition with regard to all of these creeks that you have mentioned, was it as far back as prior to the Civil War?

A. Yes, when I was a chunk of a boy, but at what date I don't know, but I was a youth.

Q. Are any of the people from who you learned this tradition now living?

A. They are all dead.

Q. Did you know Francis Browning, and his wife, Jane Browning, if so, are they now living or are either of them dead?

A. Yes I know them. They are dead.

Contesting defendants move to strike out the testimony of the witness.

CROSS EXAMINATION.

By Mr. Sheppard.

Q. Is it an uncommon thing to find two creeks bearing the same name, emptying into the same river in this section of the country?

A. It is not ordinarily so at the same period of time.

Q. There are two Huffs Creeks flowing into Guyandotte River *withing* something like ten miles of each other, are there not?

[page 220.]

A. There are between fifteen and sixteen miles apart—between the mouths of those creeks. One is called Big Huffs Creek and the other Little Huffs Creek, which denotes a distinction between the two creeks.

Q. I believe you say you have heard that each of those creeks were called Cane Creek before they took the name of Huff?

A. That is what Uncle Bill Riffe in his life time told me, what is now *know* as Big Huffs Creek and Little Huffs Creek was first known as Big Cane Creek and Little Cane Creek.

Q. If Island Creek was called Big Madison as your father said that Doctor Hinchman said it was, would that not indicate that there was also a Little Madison?

A. I dont remember anything about that. It is quite probable that it would indicate that there was a Little Madison but if there was ever a Little Madison but if there was ever a Little Madison I don't recollect it.

Q. You do know however that there are two Buffalo Creeks in Logan County, flowing into Guyandotte River, one about twelve miles above Logan Court House and the other about three miles below Logan Court House?

A. Yes sir.

Q. You also know that there are two Hart Creeks flowing into Guyandotte River within a few miles of each other?

A. Yes sir about two miles or so from each other, but one is known as Big Hart and the other is known as Little Hart, which makes a distinction, and there are also Big Ugly and Little Ugly and Big Cub and Little Cub Creeks, one flows into Guyandotte

River and the other flows into Little Huffs Creek and there is also another Cub Creek that flows into Guyandotte River I understand up on main Guyandotte River above the mouth of Clear Fork.

Q. You also know two Turkey Creeks flowing into Tug River do you not?

A. I do. One on the Kentucky side on the Tug
page 221.] Fork of Sandy River below Williamson and the other on the Tug Fork of Sandy River not far from the mouth of Ben Creek—not far from three miles above the *moth* of Ben Creek on the West Virginia side.

Q. There are two Bull Creeks of Tug River are there not?

A. I don't know of but the one, if there are two I dont recollect of hearing any one speak of them.

Q. When you speak of traditions do you mean a reputation that has been handed down to the people living in the neighborhood of the creeks you mentioned by the older people who lived in those neighborhoods before them?

A. My Grand Ma, Nancy Stafford, my Fathers mothers, moved here to Sandy River—Tug Fork of Sandy River, in the early portion of the least century and also Uncle Bill Riffe was raised here a short distance above *Wharrencliff* and also my father and my garnd pa Spratt he was raised out in Tazwell, Washington or Smith Counties. My grand ma Spratt, she told me if I recollect right that she was born and raised *ij* Smith County Virginia and when she came to Guyandotte River she moved from Russell County Virginia. Those that I mentioned, I have heard talk about what I have related. It was handed down by tradition from them, they were talking about those things when I was a boy.

Contesting defendants move to strike out the answer.

Q. Give me your definition of tradition?

A. Tradition—my understanding is that it is something that occurred and has been handed down from one generation to another, from the older generation to the younger generation.

Q. Does this tradition exist among the people now living in the neighborhood of the creeks, the names of which you say has been changed?

page 222.] A. Well that is a question I cant answer for in fact I dont know. Some do and others do not I suppose, I live at the mouth of *Gilber* Creek, the *primitave* name, if grand pa Spratt was correct was Big War Creek and Uncle Bill Rife and grand ma Spratt said that one day and time it went by the name of Kettle Creek. Subsequent to that period of time it went by the name of *of* Gilbert Creek.

Particularly as to Gilbert Creek that tradition exists.

Q. Is there any other of the creeks you have mentioned, the name of which have undergone a change in the neighborhood of which the old settlers and their descendants live?

A. I do not know that there are, if there are I dont recollect it.

Q. You have never lived in the neighborhood of Lick Creek, Thacker Creek, or Turkey Creek have you?

A. I have not? I worked a while at the mouth of Sulphur Creek.

Q. What year was that?

A. The, spring, summer and fall of 1860.

Q. Was there a reputation existing in that community at that time or as you call it a tradition that Thacker Creek was originally called Lick Creek and afterwards called Turkey?

A. I never heard any such as that mentioned. If I ever did I dont have any recollection of it.

Q. What old men did you become acquainted with at that time who lived in that section?

A. I can tell you a portion of them—Old Henry Davis, lived at the mouth of Blackberry on the Kentucky side, Old Uncle Johnnie Ferrell, at the early portion of the year 1860 lived at the mouth of what is known as Thacker Creek now and he moved to Pigeon Creek where Jake Ferrell, his son now resides, and Old Uncle Asa McCoy lived at the mouth of Sulphur, and across on the Kentucky side there was Rich Hatfield, Mack Hatfield, Wall Hatfield, Ferrell Hatfield and upon Mate old Uncle

page 223.] *Joh* Murphy, Joseph Murphy, Andrew Murphy, Doctor L. Rutherford and Anse Ferrell lived here at

Matewan and old Uncle Ale Hatfield lived on Mates Creek, I could mention others.

Q. Many of these old persons in coming to the store where you clerked would come down Thacker Creek or pass the mouth of it would they not?

A. Yes. At times they would.

Q. How far *far* was the store in which you clerked from Thacker Creek?

A. I dont know just the distance, some three or four miles just below I suppose; it was a little below the mouth of Blackberry Creek where I clerked in the store?

Q. Many of the descendants of those old men still lived in that same neighborhood do they not.

A. Why they are scattered off from there some distance. Uncle Ale Hatfield his descendants are about all dead.

Q. I know that some of the descendants of those men have moved away but my question is are there not many of the sons and daughters and grand children of those old men yet living there?

A. They are living around in the country *arould* there, some of them.

Q. Now tell me whether there is or is not quite a number *a number* of the sons and daughters and grandchildren of those old men yet living in the neighborhood around Thacker and Sulphur Creek?

A. Some, how many I dont know.

Q. Can you tell me any one now living in that neighborhood that you ever heard relate the same tradition as you *styl* it about the of Thacker Creek

A. When I was there clerking if people talked about these traditions I have no recollection of it. I have not heard any person now living in that neighborhood talking about these traditions, if I ever did I dont recollect it.

Q. Did you ever hear it from any citizen of that

page 224.] neighborhood not now living?

A. I dont remember as I ever did.

Q. *Wher3* were you when you heard of Thacker Creek being at one time called Sycamore and at another time called Turkey Creek?

A. At home. Grand Ma Stafford came there on a visit and I heard her at vari... times when she come there talk about these things. She lived at that time I suppose not far from this station they called Rawl, subsequent to that time I visited her when she lived on the Blackberry Fork of Pond Creek.

Q. Now tell us where you got what you call the traditions about Sycamore Creek being called Turkey Creek?

A. I got it from Grand Ma Stafford she said the creek now known by the name of Sycamore was first called Turkey Creek and what is known as Thacker now was called Sycamore Creek, and they reversed names—they changed names.

Q. What old people lived in the neighborhood of Sycamore Creek at the time you heard this?

A. I suppose John Lawson lived there, and some of the Maynards lived above on what was called Lick Creek on the opposite side of the river and some of the Williamsons here—they owned this property.

Q. Well the descendants of the Maynards and the Lawsons and the Williamsons, or at least many of them, still live here do they not?

A. I suppose they do, some here in this town, Doctor George Lawson and some in Pike County and some out in Wythe County.

Q. Were you at home when your Grand mother told you about Sycamore Creek?

A. I was.

Q. How far was that from Sycamore?

A. I suppose about thirty miles is what they called it.

Q. How far did you live from Thacker when your grand mother told you about that creek?

A. I suppose it would be between twenty and thirty miles the way you would travel.

page 225.] Q. As I understand you you get what you call a tradition about Gilbert Creek from a great number of

people and that that tradition is widely known throughout the section of country around about Gilbert Creek, is that correct?

A. Well I will answer that in this way, such persons as Grand Pa S[illegible]tt and Grand Ma Spratt and Uncle William Riffe, is who I got my information from.

Q. That tradition however, is well known yet among the people living in that section of country?

A. I think so, I hear them talk that way.

Q. And the tradition you speak of about Thacker Creek as originally being called Sycamore and then changed to Turkey you get from a statement to you by your grandmother Stafford, is that right?

A. Well she made this statement not in my presence but directed to older people than I was, when I was a boy.

Q. And that time as I understand you you were from twenty to thirty miles from Thacker Creek and your grand mother never did live on that creek or in the neighborhood of it?

A. Well as I have previously stated Grand Ma lived up at the station on the railroad at that day and time at what is called Rawl now and afterwards moved to the Blackberry Fork of Pond Creek.

Q. Please answer me yes or no, did your grand mother ever live on Thacker Creek or in the neighborhood of it?

A. I dont know what distance you would call a neighborhood. She lived some six or eight miles I suppose below Thacker.

Q. In asking you on page 226 whether you ever lived in the neighborhood of certain creeks, I improperly used the name "Lick" Creek, tell me now if you ever lived in the neighborhood of Sycamore Creek?

page 226.] A. I dont suppose I did, as I previously stated I lived a little above the mouth of Sulphur Creek during the spring, summer and fall of 1860.

Q. Then you do not profess to know that there is any tradition or reputation now existing in the neighborhood of *Tyacker* Creek that it was once called Turkey or in the neighborhood of Syca-

more Creek that it was once called Turkey or that such tradition or reputation ever existed in those neighborhoods, do you?

A. As I previously stated that if ever the people that I was acquainted with that lived there ever had any such tradition as that *the* never mentioned it in my presence.

RE-DIRECT EXAMINATION.

Q. Do you remember having heard any conversation whatever upon the subject of creeks among the people living about Thacker and Sycamore while you were in that country?

A. Objected to by the contesting defendants.

A. When I was there in 1860 if I recollect right a thing of that kind *wasent* mentioned about those creeks, only the local names they go by now.

Q. Who kept the store at which you clerked near Sulphur Creek?

A. Warren M. Alderson.

Q. How long has your grand mother been dead and at what age did she die?

A. She died during the war. I dont know how old she was but she was an old woman.

And further this *depinent* saith not.

J. W. STAFFORD.

3 days and 82 miles.

page 227.] J. W. STAFFORD, being recalled for further cross-examination.

Q. Do you own the bottom of *Guyandoote* River *lyning* on the lower side of Gilbert Creek?

A. Yes.

Q. Who owned and occupied that land at your earliest recollection?

A. Isaac Spratt my grand father.

Q. Did you ever learn from Isaac Spratt or from your own investigation where the three sugar trees called for as a corner of the Morris 500,000 acres and the Cloyd survey stood?

Objected to by the defendant King, as not competent and not cross-examination.

A. Old man Spratt in his life time if ever me mentioned a corner of a survey there I dont remember it. Grand Ma Spratt said the Cloyd corner was over there but said nothing about the 500,000 acres nor did not point out the corner or locate it, only it was in that bottom across the creek there from where she resided.

Q. Do you know or did you learn, from any of the old people living about the mouth of Gilbert Creek the place where Gilbert Creek originally emptied into the river?

A. All I know in relation that question is that Uncle James Spratt told me that the creek run in higher up the river.

Q. Is there any thing there now by which you can identify the place where you learn that Gilbert originally emptied?

Objected to by defendant King.

A. Near so.

Q. State what it is?

A. It is a Sycamore tree on the bank of the Guyandotte River, at the lower side of the road that goes up Gilbert and up the river.

Q. Was the mouth of the creek on the upper or lower side of that sycamore.

page 228.] Counsel for the defendant King objects to the foregoing and all other questions relating to the mouth of Gilbert Creek.

A. On the upper side.

Q. Do you remember an occasion when you with several others was at the mouth of Gilbert Creek when there was some surveying being done and when a measurement was made from a small sycamore standing on the river bank at the corner of Dave Trents lot down to a place *pointted* out as the former location of the three sugar trees?

A. Yes I do.

Q. Is the sycamore tree you speak of now the same one we measured from that day?

A. Yes it is the same tree I suppose.

Defendant King moves to strike out all of the testimony of the witness upon recall.

CROSS-EXAMINATION BY JUDGE STILES.

Q. Did you ever see any marked sugar trees any where about the mouth of Gilbert Creek—I mean marked as corner trees?

A. I never did.

Q. Did your Grand Mother Spratt ever point out the location of any corner of any survey in that locality to you?

A. If she ever did I do not remember it. She simply stated that Cloyd corner was over in that field—in the bottom on the lower side of the cree, that was after the war that she stated that, is my recollection.

Q. When was the first you ever heard any mention of the 500,000 acre tract or—

A. If my recollection is right about the corners claimed as the 500,000 acre tract it was some time between 1840 and 1850. The corner there always when I was a boy until the French c me to look after this 500,000 acre tract was called the Cloyd corner and was also said to be a corner of the 500,000 acre tract

page 229.] Defendant King moves to strike out all of the answer after the words 1850 as not responsive.

Q. You never saw or knew of your own knowledge of any corner of any survey about the mouth of Gilbert Creek.

A. Why I have seen the Crawford survey—what was said to be a corner of the Edward Crawford survey. It was two poplars and a beech if I *recolect* right.

Q. Where were they situated?

A. At the lower side of the river bottom below the creek on the bank of Guyandotte River.

Q. How far below the mouth of the Creek?

A. About twelve to fifteen poles I suppose.

Q. Is that down near the head of the narrows?

A. It is at the head of the narrows.

Q. What was the occasion of the first mention of the 500,000 tract in that neighborhood?

A. If I recollect right Laferrierre, a Frenchman who was an agent for Maupertuis who was an heir of Dumas, come here and had Doctor Dinges surveying to run out this 500,000 acre tract and the citizens around they were talking this question which came up amongst them and they were talking that one corner was at the mouth of Gilbert.

Q. Laferrier was undertaking to make a corner and run the survey from that point was he?

A. Objected to by contesting defendants.

A. Well if I understand the question right, where he first commenced was about five or six miles north or nearly so I think from the mouth of what is known as War Creek on Sandy River, whether the surveyor measured the distance from the mouth of War out on to Cub Creek I dont know to locate the starting point I dont know.

Q. What I mean is that Laferrerie came in there to Gilbert Creek to locate a corner and run a line from it and then you heard talk about the 500,000 acres from that time on?

page 230.] A. Yes sir. That is the first time that I ever heard the 500,000 acres mentioned. Always before that it had been known as the Cloyd survey.

Q. Your never yourself knew any Cloyd corner nor any other corner except the Crawford did you?

A. That is all that I remember of seeing about the creek.

Q. Did *Gilber* Creek ever within your recollection flow into Guyandotte River further up the river than it now does?

A. Why yes if I recollect right it flowed a little higher up than it does now. The mouth of the creek *thare* is broader than it used to be.

Q. How much further up the river was the lower bank of the creek at the mouth of the creek at your earliest recollection than it now is?

A. That is a pretty hard question for me to state, it is some lower down but not very much if I recollect right; I think I would be safe in saying that it is a rod further down.

Q. How early do you remember Gilbert Creek?

A. Well as I have previously stated I am 69 years of age and I remember it back to when I was eight, or nine or ten years old.

Q. Do you remember a spring that your grandfather had below his house and that was curbed up with stone or boards?

A. I do.

Q. How far back from the creek was the spring?

A. Why it was quite a distance, it must have been sixty or seventy-five yards from the upper side of the creek.

Q. Was it on elevated ground or down in the bottom?

A. It was in a bank of the bottom and the tail of the spring flowed into the creek—up it a short distance.

Q. This spring was some few feet above the level of the creek was it?

A. Yes.

page 231-2.] RE-EXAMINED by contesting defendants.

Q. You have described the mouth of Gilbert Creek at the distance from the spring to the creek as you saw it, is that correct?

A. Yes in my remembrance of the creek.

Q. How far were you and Mrs. Spratt from the place you have understood the three sugar trees formerly stood when she told you the corner of the Cloyd survey was over in that bottom?

Objected to by defendant King.

A. She was in her own home she lived where Dave Trent now resides, I would suppose it was a hundred and odd yards.

Q. Does that bottom where she said the Cloyd corner was, lie in plain view from Mrs. Spratts house?

Objected to by defendant King.

A. Well I would think so—it is on the opposite side of the creek from where the house stood.

RE-EXAMINED

By denfendant King.

Q. Were there any three sugar trees there?

A. I never saw them if there were.

And further this deponent saith not.

J. W. STAFFORD.

3 days and 82 miles.

page 233.] L. G. STACEY, a witness introduced by the defendant King after being first duly sworn upon oath testified as follows.

EXAMINED

By Judge Stiles.

Q. State your age, residence and occupation?

A. Age 53 years residence on Guesses Fork of Knox Creek Buchanan County, Virginia, and am a farmer.

Q. How long have you lived on Knox Creek?

A. I have lived there, with the exception of eighteen or twenty months, ever since I was a year old.

Q. What if any official position have you occupied in that county?

A. I hold the office of Justice of the Peace.

Q. How long have you been Justice of the Peace at different times?

A. Probably about eighteen years.

Q. Have you lived near the Race Fork of Knox Creek and if so how near and for what length of time?

A. Yes sir I lived within three fourths of a mile as far back as I can remember—except about eighteen months in 1864 and 1865 and since that time I have lived in that locality. I now reside within about three miles of the creek.

Q. Do you know where Dan Justice Lives on the Race Fork?

A. Yes sir.

Q. How long have you been acquainted with the little hollow where he lives?

A. You mean a small branch that runs up from his place there?

Q. I mean that little hollow or drain at the mouth of which he now lives?

A. I cant say that I paid any more attention to it than any other little drain or hollow on the creek until the last two years.

Q. Have you prior to the last two years ever been up and down through that hollow and if so, how often and over

page 234.] what length of time?

A. That would be very difficult for me to say un-

less I was there cattle hunting or hunting for game *of ginsanging*. I have been in them capacities all up and down that creek, or nearly every hollow on that creek from the mouth to the head.

Q. Were you in that hollow about the 11" or 12" of May last in company with others to examine certain stumps and logs up the drain above Dan Justice's house if so state who was with you?

A. Yes—I *couldent* state what the date was but I was there some time last spring in company with, C. L. Dixon, Judge Counts, D. L. Auvil, J. N. W. Blankenship and a man by the name of Christian but I dont know his first name they said he was a surveyor.

Q. What stumps did you examine at that time?

A. We examined two poplar stumps and then what I *ptonounced* to be a part of a lynn stump.

Q. What was the position of the lynn stump with reference to the two poplars?

A. It was a little bit sorter between them but a little bit down nearer Justices house.

Q. Did you find any evidence in the immediate neighborhood of that lynn stump that any other knd of tree had stood close by it within two or three feet?

A. No sir I did not.

Q. Was any examination into the ground by digging made around the stump?

A. I think Mr. Auvil, he had an old ax in his hand and he was a chipping on the lower side of the stump or near the ground. There was no digging in the ground that I know of, it was low down near the ground.

page 235.] Q. Did you examine the poplar log lying in the drain below the lower poplar stump to see whether it was part of the tree and had been cut from that stump?

A. Yes sir I examined it very carefully. There was a log lying *th* about twenty or twenty-one feet long and that log that I saw there had rolled down there was certainly from that lower poplar stump in controversy.

Q. What was there about the stump and the log that would

lead one to the opinion that the log had been cut from the stump, if anything?

Objected to by contesting defendants.

A. Well sir there were two or three peculiarities about it, one was this there was a what we call a splinter or something pulled out of the stump that remained yet upon the log on the one side, and on the other side there was a bulge left down here that left a hollow in the stump—that way—(indicating) and another was what we call a wind shake around the top of the stump—it did not reach out to the edge and about the same sized circle was in the log as the wind shake. The wind shake went up through and had been cut through and showed that that log had come from that stump.

Q. Did you look for any evidences upon the stump or log to see if the tree had ever been marked as a corner tree? if so did you find any?

A. Yes sir I looked on the stump and log, both very carefully. I found no hack that indicated *that indicated* that it had been marked as a corner of any survey, but I saw some places on the log as though the bark had been scalped off with an ax—that was lengthwise—this way (indicating).

Q. Do you know how corner trees of surveys are usually marked?

A. Yes sir.

Q. Did you ever see any marked trees in the hollow or drain or along the hill side thereof in the neighborhood of where these stumps are or where they are?

page 236.] A. No sir I never did.

Q. Have you had any experience with clearing land so as to observe how long it requires for stumps of different kinds to rot out and disappear and to, observe the difference in time that stumps of different kinds will last?

A. I have cut timber more or less ever since I was a boy but as to the time that it would take stumps of different kinds to rot out I could not answer, but I can say this that the soft woods would rot out quicker than other woods.

Q. As between a lynn and a sugar tree cut at the same time which in your judgment and experience would last the longer?

A. Well my observation—the experience I have had in that matter would be that he sugar or beech or some other kind of hard wood would last longer than the lynn, a lynn and buckeye is very easy rotted.

Q. What are the softest woods that grow in the Knox Creek Country?

A. Buckeye and lynn are supposed to be the softest woods that I know of.

Q. How would you describe or call the hollow where Dan Justice lives?

Objected to by contesting defendants.

A. It is just a small little branch that goes up there I dont think it is over three hundred and fifty or four hundred yards long.

Q. Is there any water in it and if so how much?

A. I *couldent* say that, that depends upon the weather a great deal. At dry *weayher* there is very little at the present time there is probably none but at a little spring near the house there.

About ten or twelve yards from the house there is a little spring there but above there I never saw any water in dry weather, early in the spring there would be water there most all of them little rivulets there is water in them from the snow and ice in early spring.

page 237.] CROSS-EXAMINATION

By Mr. Sheppard.

Q. You base your opinion on the rotting out of sugar tree and lynn stumps on green stumps cut at the same time do you?

A. Well I base it this way the soft woods and the hard woods there is a difference, the soft woods decay and get away at an earlier time than the hard woods, that has been my experience in life.

Q. You mean that if a sound hard wood stump and a sound soft wood stump are left from cutting at the same time that the soft woods would decay first do you?

A. Yes sir, that has been my experience.

Q. That however, would be affected more or less by the sound or unsound condition of the stumps at the time they were cut would it not?

A. Certainly so it would.

Q. A green lynn stump would leave a trace longer than a rotten sugar tree, would it not?

A. Certainly it would.

Q. Did you notice that the log you examined in the hollow had been trimmed in the small end for slipping?

A. I did not examine that end carefully.

Q. Did you notice whether the *but* end of that log was further down or further up the hollow than *ad* right angles to the stump?

A. I think it was a little lower down the hollow than a right *aggle* would have been.

Q. How far would a tree of that size on ground like that where it was cut jump from the stump when cut?

A. That would depend upon circumstances if there was an obstruction here or it would strike another tree—a smaller tree it would still go further from the stump has been my observation, without any obstruction on ground like that it *would-*

page 238.] *ent* go as far.

By Mr. Kelly.

Q. At whose instance did you make the examination of these stumps and logs?

A. Well sir I cant say I will just relate the circumstance this way, those *gentelemen* that I spoke of passed my place and as I was going out to work they hallowed for me to come down and I went to my gate, some one of the crowd, I dont know which one asked me if I was able to ride up to Dan Justices, while I was having my horse gotten up Mr. Dixon and Mr. Counts rode on and left those other with me. I *dident* over take them until I came to Justice's store I remarked to them that it would just suit me to go up on that creek that I wanted to get some seed corn to plant and also did get a half bushel of seed corn of Dan Justice that day. And while at Dan Justice we all went up to those stumps.

Q. Was there any thing said to you by any person in the crowd about the kind of an examination you were to make and if so, what was said and who said it?

A. My recollection was that J. N. W. Blankenship said to me that they were going up there to look at some stumps that were said to be marked as a corner or something of that kind.

Q. Was that all that was said to you about the investigation you were to make there?

A. I dont know sir whether that was all the conversation about it or not, or in other words that was about the size of it.

Q. Did you know the kind of investigation you were going to make of those stumps and logs when you went up to where they were lying? in other words did you know what you were going there for?

A. I did not until I was the greater portion of the way and I asked Blankenship what they were going up there for and he said they were going up there to look at some stumps.

Q. When did you find out what you were going there for?

A. Well I *dident* find out what I was going there for at all, I went there for some seed corn and I asked these gentlemen what they were going there for and they said to look at some stumps and when we got to Dan Justices they said let us all go up. They went *durther* to state that they had a surveyor along and my impression was that they intended to do some surveying there.

[page 239.]

Q. Who instructed you to examine those logs and stumps as related in your examination in chief?

A. I can't say that any did sir. I was just in the crowd and I can't state that any one did.

Q. Then no one ever told you to make this examination?

A. No sir I don't know that any one did.

Q. How did you come to be a witness in this case?

A. Well say what was *what was* supposed to be subpoena *issue* by the Commissioner.

Q. Did you know what you have to testify in this case before you were served with a subpoena?

A. I *dident* know what the question was going to be no more than a man in Europe but I was going to tell the truth.

Q. What was your object in examining those logs and stumps?

A. Well I just wanted to know the true facts I had heard something said that there should have been some marked timber or corners or something there and I wanted to know the true facts whether they were there or not.

Q. What facts did you want to know?

A. I wanted to know really whether they was there or not.

Q. Whether what was there or not?

A. Whether *they* was a corner there or not or marked timber supposed to be corners.

Q. Well what did you find out?

A. I found out just what I have stated.

Q. State it again please?

page 240.] A. Just what I have previously stated her.

Q. Did you find any corner tree marked?

A. No sir I did.

Q. Did you make a thorough investigation in searching for a corner?

A. Why I looked through all the eyes I had and all the means I knowed of there.

Q. Did you use any tools or instruments in making the search?

A. No sir had none.

Q. Then you just looked at them and decided that there was no corner mark?

A. That was all the means I had of knowing was my eyesight.

Q. Who served the subpoena on you?

A. No one.

Q. Who showed it to you?

A. J. N. W. Blankenship showed it to me, that is read it to me.

Q. He came here with you did he not?

A. I got with him *a* Alumwick, I was on the train when he come in?

And further this deponent saith not.

L. G. STACY.

2 days and 100 miles.

page 241.] JAMES M. CHARLES, a witness introduced by the defendant King after being first duly sworn upon oath testified as follows:

EXAMINED

By Judge Stiles.

Q. State your age, residence and occupation?

A. Age 35 years, I reside on Paw Paw Creek a tributary of Knox Creek Buchanan County, Virginia and am a farmer.

Q. How far do you live from Dan Justice?

A. About five miles I reckon across the hill.

Q. Did you ever live on Race Fork?

A. Yes sir.

Q. How long?

A. Eleven years I guess.

Q. How near to where Dan Justice now lives?

A. About two miles or two and a quarter?

Q. Have you ever been up in that hollow or drain where he lives and have you been pretty well over the same?

Objected to as suggestive by contesting defendants.

A. Yes sir.

Q. How many times?

A. I *couldent* count the times I have been there dozens of times in that hollow.

Q. How extensively have you been through that hollow and over the ground therein?

A. I have been over the most of it. I don't suppose there has been over twenty feet square but what I have been over.

Q. What were you doing in there to take you over that ground?

A. *Sanging* and cattle hunting and several other things.

Q. Did you ever make any search for lines or marked trees

or attempt to trace any lines in that hollow or drain or in the neighborhood?

A. I looked one time for a line in that hollow. I have been along several times when lines was run in there

page 242.] in that hollow and in that neighborhood.

Q. Who were running the lines?

A. Riley Lee I believe was one and Cris Ranes I believe I seen him running one.

Q. Have you been in that hollow within the last few months and seen some poplar stumps—large stumps that some of the parties to this suit contend were the stumps of corner trees. these stumps being on the left hand side of the hollow going up and about 150 or 175 yards from the mouth of the hollow?

A. I have been there inside of four months and the stumps are 175 or 200 yards from the mouth of the drain.

Q. Did you ever see the trees when they were standing?

A. I passed by them dozens of times I guess?

Q. Did you see them when you were hunting for a line on the occasion you have spoken of?

A. I *weasent* at them. I was within about twenty-five feet of them I guess.

Q. How did you happen to be hunting for a line or marked timber in that hollow at that time?

A. Mr. Rece Davis got leave to take *come* timber off what was known as the Lonheart survey, some walnut timber, joining the J. N. Watkins land. It was reported that he took a log off of the Watkins land and me and my Pa and Mr. Davis went to look for the line between the Lonhart survey and the Watkins.

Q. How much of a *searvh* for that line and what kind of a search did you make?

A. I started at the mouth of the hollow about twenty five feet from those supposed corners—I mean the poplars and went straight up the left hand side of the hollow to the top of the hill.

page 243.] Q. Did you look for marked timber on your way?

A. Yes sir.

Q. Where did your father and Rece Davis hunt?

A. Rece Davis and me went right along together and my father turned up the hollow from us by the poplars

Q. How near did your father go to, those poplars or to either of them?

Objected to by contesting defendants.

A. I *gues* he went right to them. We was within about twenty-five feet of them when we separated.

Q. Did you come back through the hollow to the mouth of the hollow?

A. I dont know whether I come back down through the hollow or went down over the hill. I lived over the hill and I dont remember now.

Q. Did you at that time or at any other time see any corner marks on those poplars or either of them?

A. Not as I recollect sir.

Q. Did you or Davis or your father at that time find any marked timber in that hollow?

A. I found a cucumber. I *knowed* where it was before that time and took Davis to it me and him went to the cucumber.

Q. Did any of you discover any other marked timber at that time?

Objected to by the contesting defendants.

A. Nothing only one cucumber in that hollow.

Q. Are you familiar with the common method of marking corner trees?

A. Yes sir I think I an.

Q. How are they usualy marked?

A. Three hacks on a side.

Q. How long ago was it that you made this hunt for the lines in that hollow?

A. Well sr it was eleven or twelve years ago.

page 244.] Q. Had you been there many times before that

Objected to by contesting defendants.

A. I have been there lots of times.

Q. Have you been there since?

A. Yes I have been there lots of times since then.

Q. What is your fathers name?

A. George Charles.

Q. When you were there and saw the stumps within the last four months did you notice a large poplar log lying in the bottom of the hollow below the lower of the two poplar stumps you have mentioned?

Objected to by contesting defendants to this and all these questions as leading and suggestive.

A. Yes sir.

Q. Did you look at the log with a view to determining whether it came from either of the poplar stumps or where it came from?

Objected to by contesting defendant.

A. Yes sir I looked at the log and the lower stump.

Q. What was the result of your examination?

A. I believe the log came from the lower stump.

Contesting defendants move to strike out the foregoing answer.

Q. What did you find about the log and stump if anything that would indicate that they had been part of the same tree?

A. Where it had been cut and a certain piece had pulled out and was on the log.

Q. From what was the piece pulled out?

A. It was on the log part pulled out of the stump as the tree fell I suppose, it was a foot or some over as well as I remember, the piece that was on the log just about filled the size of the hole in the stump.

CROSS EXAMINATION

By Mr. Sheppard.

page 245.] Q. How did you determine that the piece on the log just about filled the hole in the stump?

A. By closely examining all parts of it.

Q. Did you measure the piece and measure the hole?

A. I aint certain but it seems like I did but I aint certain about it.

Q. Why were you making a close examination of those stumps and the log?

A. Well, yes, sir, I went to look at them and see if I could see any marks on them.

Q. Why you had already seen the trees when standing, and have testified that if they were marked you *dident* see them, why was it necessary for you to go back and look again for marks on the stump?

A. I went back after they got up such a talk about it and I went back on purpose to look again.

Q. Then you was not satisfied with having seen those trees in passing and thought you would make an examination so as to be certain there were no marks did you?

A. I *wasent* certain but they got a big talk up and I went to look again.

Q. And when you got there you found *you found* the east and north sides of the tree cut out in cutting them down, *dident* you?

A. There was a notch cut to make the tree fall it might have been the north and east sides that was cut, I aint certain.

Q. Why are you not just as certain of that as you are that a particular part of the log would fit a particular part of the stump?

A. I *dident* pay as close attention to the way it was cut as I did to the way that piece was pulled out of the stump.

Q. You were trying to find something then to show that that log came off of that lower stump, were you not?

A. *Nor* sir I *wasent* trying to find something only to the best of my knowledge that log came off of that lower poplar stump.

Q. Now tell me what part of the stump pulled out

page 246.] and went with the log?

A. As the stump was cut out on each side it was pulled out in here—on the top as the tree fell and jerked it out down in the stump.

Q. Don't you think you have got that piece a little too long?

A. Which piece?

Q. The piece that you say hung to the log?

A. I think it was a foot or some over.

Q. Do you say that there is a piece pulled out of that stump below the notch that is a foot or more long and still hanging to the log, or was hanging when you saw it four months ago?

A. Yes sir it was still on there.

Q. Those were the only poplar trees in that hollow were they?

A. No sir there was plenty of poplar trees in that hollow before the clearing.

Q. You *wasent* within twenty-five feet of any others were you?

A. At that time at the time I was hunting for that line?

Q. Yes.

A. I *gues* I was close to several trees the hollow *wasent* cleared at that time and was full of poplar trees.

Q. There are two poplar stumps just above the two you have been talking about and about the same size of these two, tell me how close you got to those trees when you were looking for the line?

A. If they are right close above them I was very close to them when I was looking for that line but I don't know how close I was.

Q. I will get you now to locate two other poplar trees in that hollow that you saw when hunting the line?

A. Well I saw the tops of lots of them, there was none took out at that time there was no clearing done.

Q. I thought you said you went up that hollow
page 247.] looking for the line?

A. I did go up the left hand side of that hollow.

Q. If you did you certainly must have passed close to two other poplars, did you or not?

A. I suppose I passed very near several for it was a good hollow of poplar timber at that time and none took out.

Q. Tell me how close you did get to two other poplars at that time?

A. Well sir I *couldent* tell you how close I did get to them it has been so long.

Q. The only ones that you remember positively about are these two that you single out of that forst, is that so?

A. I never went to them as I said but went within twenty-five feet of them but I went by them dozens of time as I *travelled* by through there home, from *sanging*.

Q. Do you remember from the time you were hunting that line to the present that you went just within twenty-five of those trees?

A. I said about twenty-five as near as I thought.

Q. Between what corners were you trying to trace a line?

A. J. N. Watkins and what is known as the Lonhart survey.

Q. What was the size of the Watkins tract?

A. I believe they called it an 1800 acre survey.

Q. Well it is located on the Paw Paw Fork of Knox Creek is it not?

A. The principal part of it is and part of it on Race Fork.

Q. The cucumber was a corner of that tract was it?

A. I suppose it to be but don't know, a line tree or corner one, I disremember whether there was two hacks on a side or three.

Q. You can't remember whether you found a line tree or a corner tree of the survey you were following the line of?

A. No sir I aint certain that we found a line tree but we allowed it was a line or corner tree of that survey.

page 248.] Q. You know where that cucumber was before you went there *dident* you?

A. Yes sir I have seen them before that time a *sanging* around there.

Q. And you took Rece Davis and went to that tree without any trouble did you?

A. Yes sir I went straight to it I guess.

Q. You *looke* at it?

A. Yes sir.

Q. You was right up to it was you?

A. Yes sir.

Q. And you understood that it was a line or *corber* tree on the line and corner that you was hunting for, did you?

A. I supposed it to be on the line of the survey that we was a looking for. I supposed it to be a corner or line tree of that

survey.

Q. And although you are unable to say how the cucumber tree you examined was marked, yet you are willing to swear that these two poplars that you *dident* get closer than twenty-five feet to were not marked? Is that true?

Objected to by defendant King.

A. I suppose I was within twenty five feet of the poplars and if they were marked I don't know it.

Q. Then you do not mean to swear that these poplar trees were not marked do you?

A. I mean to swear that if they was marked I don't know it. There was nothing that I know of marked in that hollow but the cucumber.

Q. Did you never hear of the triple lynn as a corner of the Lonhart survey, that stood up in that hollow?

A. I may have heard talk of it but if ever seen it I don't know it.

Q. Tell us now where that cucumber stands?

A. It stands down towards *towards* the mouth
page 249.] of the hollow on the left hand side up on the side of the hill.

Q. It stands near the top of the point on the upper side of the branch at Dan Justices house, does it not?

A. It seems to me it stood about half way from the branch to the top of the hill, as well as I recollect.

Q. Was it between the poplar stump and the mouth of the branch, or was it up on the side of the hill to the left of the poplars?

A. It stands up above them on the hill and it seems to me it might have been a little to the left of the stumps, I don't recollect exactly, it might have been.

Q. In going from the mouth of the branch up the hill to the cucumber you would pass to the left of the poplar stumps would you not.

A. If I was to turn up the hill below then I would pass to the left.

Q. That is the way you all went to the cucumber was it?

A. I believe that is the way I went when I looked for that line.

Q. Then when you were looking for the line and got in twenty-five feet of the poplar were you between the poplars and the small branch or on the other side of the poplars on the hill above them?

A. I supposed I was within twenty-five feet of the poplars and if I turned up as I suppose I did the poplars were on my right.

Q. Don't you remember positively whether you did turn up or not?

A. I went up the creek and turned up the *holow* and went up the hill to the best of my knowledge.

Q. It seems to me Mr. Charles that you are unable to remember and swear positively just how you did go up to that cucumber am I right?

Defendant King moves to strike out the observation of counsel.

A. I turned up below the poplars I suppose within twenty-five of the poplars as near as I *recolect*.

page 250.] Q. How far did you follow the line after you got to the cucumber?

A. To the head of the hollow as near as I could.

Q. Had you followed the line any before you got to the cucumber?

A. It seems to me that I commenced at the *mouthm* of the hollow looking for corners, I *aint* certain of it but strikes me that I did.

Q. You have stated twice that you took Rece Davis and straight to that cucumber, do you now undertake to say that you commenced on that line at some other point?

A. It seems that I commenced looking at the mouth of the

hollow. I never commenced looking until I got to the mouth of the hollow. It seems like I did I *aint* certain.

Q. Who went back with you to examine the stump and the log?

A. Me and Rece Davis passed by and I went up and looked at them.

Q. Who went with you?

A. Rece Davis.

Q. Where did you get together?

A. At one of my uncles about three miles below there?

Q. Above or below Rece's house?

A. Below.

Q. And you went on up past Rece's house?

A. Yes sir I was a going home.

Q. And *Reces* continued on with you up to the stumps?

A. And went on home with me.

Q. And he come down here with you to day *dident* he?

A. Yes sir he come on the train as I did.

Q. Who got you *you* to come here as a witness?

A. Davis said that Wilder wanted me and I come.

Q. Who else did Davis bring down here to day?

A. I don't know any body.

RE-EXAMINATION.

page 251.] Q. When you went to look at the poplar stumps some time ago were you there for that express purpose?

A. No sir I did not go for that purpose.

Q. When you were looking for the line with Davis and your father did you have any courses or calls to go by?

A. No sir.

Q. Did you know in what direction the line you were looking for was supposed to run?

A. I heard talk how it run and I went as near on that route as I could.

Q. Was it your purpose to go near enough to trees along your course to see whether they were marked or did you pay no attention to such trees?

Objected to by contesting defendants.

A. I looked as well as I could, it was my business to look for marked trees.

Q. Did you at any time or any other time ever pass near the two poplars or either of them on the lower side between them and the bottom of the hollow?

A. I *dident* at that time I suppose I was within twenty-five feet of them but I suppose I have at other times passed between them and *and* the bottom of the drain.

RE-CROSS-EXAMINATION.

Q. If you *dident* go up that hollow at the request of Rece Davis to look at the stumps and that log and for no other purpose tell us what did take you up there?

A. I *dident* come on that creek that day for that business, but when we got down to the mouth of the hollow he said to go up there and look at them since the clearing was done and since they had been cut down.

Q. And you went there at the request of Rece Davis for that purpose and no other?

A. When I come to the mouth of the hollow and since the quandary got up about them and I was that near I thought I would go up and Rece went with me.

And further this deponent saith not.

2 days and 70 miles.

his

JAMES M. x CHARLES.

mark.

It is ordered that these proceedings be now ad-
page 252.] journed until tomorrow morning.

J. T. GRAHAM,

Commissioner.

Proceedings resumed this the 9th. day of September 1902 pursuant to adjournment on yesterday. Present same attorneys as on yesterday.

REECE DAVIS, a witness introduced by the defendant King, after being first duly sworn upon oath testified as follows:

EXAMINATION

by Judge Stiles:

Q. State your *agen* residence and occupation?

A. Age 40 years, I live on the Race Fork of Knox Creek in Buchanan County, Virginia and *and* am a farmer.

Q. How long have you lived on Race Fork?

A. Why I have been knowing the creek about fifteen or twenty years and have been living on it about seven years.

Q. Where did you live before you moved onto Race Fork and how near to it did you live?

A. I lived up on the head of Knox I reckon about eight miles from the creek—Race Fork.

Q. How far do you now live from Dan Justice's?

A. About a mile.

Q. Have you lived at that distance ever since you have lived on the Race Fork?

A. Yes what time Dan Has lived there.

Q. Did you move there before Dan did?

A. Yes sir.

Q. Have you ever been through the hollow where Dan *Llives?*

A. Yes sir.

Q. How long and how well acquainted with it have you been?

A. Why I have been knowing that creek about

page 253.] fifteen or twenty years.

Q. Have you known that hollow where Dan lives for that length of time?

A. No sir *Iit* has been six or eight years that I have knowed that hollow.

Q. Were you ever up through it or around over it before Justice settled there and before the timber was cut away?

A. Yes sir.

Q. Have you been there since the timber was cut and within the last year?

A. Yes sir.

Q. Have you seen two poplar stumps on the left hand side of that hollow that Messrs. Campbell and Sheppard and others claim were corner trees?

A. Yes sir.

Q. Did you ever see those trees while they were standing?

A. Yes sir.

Q. You may state what occasion you had to go through that hollow at any time before those trees were cut?

A. I was hunting for walnut timber and corner trees. George Harmon had a survey in there—he bought a survey in there for back taxes and told me if I would pay half of the taxes I might have half the land.

Q. Go on and tell how that lead to your going in there?

A. When I done that I went and cut some walnut timber and hauled it off and some body reported me up that I was taking it off of Watkins' land and I went and got George Charles and Mont—J. M. Charles to help find the line. We found a cucumber marked looked like it was a corner tree.

Q. Describe what search you made and how you made it?

A. We started up the hollow and I told George, he went up by them poplars and Mont said he knowed where
page 254.] the cucumber was and me and him went to that and on then to the top of the hill to the white oak corners, and after we went there I *seed* that that *wasent* on the *the* Watkins land, where I took the logs off.

Q. You say George Charles went up by the poplar, how near did he go to them?

A. Well he went—I *couldent* state point blank how close, he was a hunting the trees on that side of the hollow.

Q. How near do you think?

A. I told him to look all those trees along there. He may have went by them, he was a *lookking* at all the trees along there but whether he was looking at them or not I don't know.

Q. How far was the cucumber from these poplars?

A. It was twenty-five or thirty feet I reckon, I *dident* measure it.

Q. How near to the poplars did you go at that time?

A. We went to that cucumber.

Q. Did any of you at that time discover any marks on the poplars?

A. I *dident*.

Q. Did the others report any?

A. No sir.

Q. Did you ever at any time see any marks on those poplars?

A. No sir not them stumps I *dident*.

Q. Did you see any sugar tree standing between those poplars or nearly between them?

A. No sir I *dident*.

Q. Have you since the trees were cut and within the current year been to and made any examination of those stumps and other stumps in that immediate neghborhood and if so when and with whom?

A. Yes sir. I went with Daniel Justice a time or two and looked at them and went with Dixon a time or two and looked at them.

page 255.] Q. Who besides yourself was with Mr. Dixon when you examined the stumps?

A. Why some three or four more men, I *dident* know them they said they were from Wayne County.

Q. Did you at that time make any examinaton *aro8nd* an old stump standing somewhat between the two poplar stumps?

A. Yes I dug out a lynn root, we took it to be.

Q. Did you find any sugar tree roots at that time or any

evidence that a sugar tree had ever grown near that lynn stump?

A. No sir we *dident* find none.

Q. Did you notice a log lying in the drain below the lower poplar stump?

A. Yes sir.

Q. Did you at that time or any other time look that log over to see if it had any connection with any poplar stump in the neighborhood, if so how many times have you examined it and what did you find out about it?

A. I looked at it several times—the log and the stump both, it looked like it come off the top of the stump.

Q. *Ehat* was there about the log that made it look as if it came off the stump?

A. Why there was a little hole pulled out by the log and sunk in at the stump and made like it would fit.

Q. What do you mean by a nole pulled out by the log?

A. It looked like in cutting the tree and fell, it looked like the two places fit.

Q. Which stump did you conclude the poplar log fitted?

A. The lower one.

Q. Did you notice a small hollow or depression in the ground a short distance below the lower poplar stump about fifteen or sixteen feet distant, a little east of south therefrom?

A. Yes sir.

page 256.] Q. When you were there with Dixon and others from Wayne County did you dig into that hole or around it?

Counsel for contesting defendants does not like to be constantly making objections but here suggests that counsel for defendant King do not continue to ask leading questions. Let him ask the witness what he did.

A. Yes sir I dug above the lynn stump and got that root out. I dug some down there below the poplar.

Q. What were you digging for?

A. Trying to hunt some poplar roots, it was said that a pop-

lar stood there, some said it was an oak and others said it was a poplar.

Q. Did you find any roots?

A. No sir.

Q. Did you ever see any kind of a log lying at or near that hollow or hole in the ground where you dug for poplar roots?

A. Why I helped Daniel Justice roll some logs down below them trees.

Q. Did you roll any from that depression or near it?

A. We rolled down below there me and Dan did, below them stumps. he had *sever ahands* there Dan did.

Q. Did you roll any away from that place that I have mentioned?

A. Yes we rolled along there on the side of that hill.

Q. Do you remember what, if anything, you rolled from that hole or near it?

A. The log we rolled there, it was a big log that had rooted up—it was a big oak, Dan *Had* sawed it up it was an oak log and we rolled it down in the hollow. Dan or somebody had sawed it up.

Q. What was the condition of the log, was it sound or decayed?

A. Why the bark was all rotted off it it had been rotting a right smart while.

page 257.] Q. Do you know anything about the discovery and removal of a sugar tree snag over on the waters of Paw Paw some distance from where Dan Justice lives some time during the last year?

A. I moved one from over there where Mose Charles lives, I brought it down to Moses house, it stood in the head of a hollow.

Q. Tell us about it and where you got it and what you did with it and how you came to do so?

A. Why Moses Charles, I went there one day and Mose Charles got me to go and help bring it down there to his house. Why I was down there and Mose said that there was a sugar tree

root up there, Shepperd and Campbell, I think had got it out and Mose wanted me to help bring it down to the house to take care of it. I found it on top of the hill between Paw Paw and Race Fork and we brought it down, me and Mose Charles, and put it in Mose Charles smoke house.

Q. Which side of the ridge did you find it on?

A. It was on the right hand side of the Race Fork as you go up on top of the hill between Paw Paw and Race Fork.

Q. How far from Dan Justice's?

A. Why I don't know point blank, but I expect about three miles.

Q. What sort of a root was it in size and shape?

A. It was about four and a half or five feet long—a right smart little chunk.

Q. What other timber, if any was there around the place where you found it.

A. There was two poplar logs I believe it was and some sugar trees and some oaks and lynns standing on top of the ridge there.

Q. Was the root fast in the ground or was it loose?

A. No sir some body had sawed it off or cut it off.

Q. How far did you carry it?

A. I suppose about a quarter, I tied a withe around it *a* drug it down the hollow.

Q. Do you know what was wanted with it?

Q. Not only what Mose said, he said that he had seen it standing there about fifteen or twenty years ago and that he thought it was a corner.

page 258.]

Q. About when did you bring this sugar tree root down to Moses Charles'?

A. It had been about a year I reckon, last August a year I reckon.

Q. What was done with it after it was locked up in the smoke house.

A. It *wasent* locked up in the house we just put it in and shut the door, it passed along at that and after a while me and

Riley Dotson John Coleman and Warden Allison took it back and put it where I got it.

Q. How did you come to put it back where you got it?

A. Why I went down and Mose said that Campbell said that we had to take that back where we got it from and we took it back.

Q. How long was that after you first brought it down?

A. I don't know as I could state point blank, not very long, about two weeks or may be more or three weeks somewhere along there.

Q. Did any one pay you for bringing the stump down and carrying it back?

A. Yes sir.

Q. Who?

A. Warden Allison.

Q. Who is Warden Allison and what was he doing in there?

A. I don't know what he was at Moses when I went down. I don't know him that is what they called him, he was a strange man to me.

Q. Who else if any one was there at the same time?

A. Moses Charles and Riley Dotson and John Coleman.

Q. Was there any one else there before you left Mose Charles?

A. No sir.

Q. Where does Allison live if you know?

A. I don't know.

Q. Do you know whether he represented any body or whether he was simply acting for himself?

page 259.] A. No sir I don't.

Q. Do you recall, or can you recall any other person or persons who was or were present at the time you brought the snag down or took it back or while you were concerned about the matter or with the matter?

A. No body when we brought *ot* down but Mose and his family, and no body when we took it back but Riley Dotson and John Coleman and Warren Allison.

Contesting defendants move to strike out the whole of the evidence of this witness relating to the sugar tree snag or root as he terms it and also each and all of his other answers.

CROSS EXAMINATION.
By Mr. Sheppard.

Q. Do you want to be understood as swearing that the piece of timber you brought off the mountain to Mose Charles house was a sugar tree root?

A. Yes sir, it was a sugar tree root and part of the log about four or five feet long.

Q. Tell us how much of it was root?

A. I expect about a foot and a half or two *foot* I reckon, I never measured it.

Q. Don't you know that that was a piece of a down sugar tree, taken off the *but* end of it after it had been *halfly* burned and that the sugar tree seemed to have broken off at the top of the ground leaving one piece or sliver standing?

A. The tree had rooted up, some of the roots had pulled out.

Q. Was there any root to the piece you brought down?

A. Yes sir.

Q. Describe what you mean by root?

A. When the tree roots up and falls they have roots to hold them up.

page 260.] Q. How much of the piece you brought down had grown under the ground?

A. I don't know point blank I *dident* measure it.

Q. Had any of it and if so, about how much?

A. I looked like some had pulled out of the ground, about a foot or maybe a foot and a half I don't know I *dident* measure it.

Q. Did you examine that as carefully as you did the poplar stump and log?

A. No sir I *dident* have no interest to examine it much.

Q. Did you say much or as much?

A. I *dident* examine it much, I said.

Q. You *examined* the poplar stump and log more carefully than you did the sugar tree then?

A. Yes sir.

Q. You were taking more interest in that poplar stump and log were you?

A. No sir I *dident* know that I would be sworn in this thing until it got up.

Q. How many stumps did you examine to see if the *polar* log would fit?

A. Two.

Q. What two stumps?

A. Them two standing in Dan Justice's field.

Q. Are there but two poplar stumps in Justice's field?

A. Yes sir.

Q. You are just as certain of that as you are that those two stumps are there?

A. Yes sir the two stumps stand in the field.

Q. Do you want to say now that there are more than two poplar stumps in Justice's field?

A. Oh yes.

Q. How many?

A. I never counted them.

Q. About how many?

A. I *couldent* tell there is I expect some eight or ten acres cleared.

page 261.] Q. Can't you estimate the number of poplar stumps?

A. No sir I *couldent.*

Q. Who got you to go and look at the stumps and log?

A. Why I don't remember now but I believe it was Dixon.

Q. Is he C. L. Dixon, the agent for King?

A. I don't know sir they say he is.

Q. How big was the piece that was pulled out of the log and left in the stump?

A. Why not a very large piece, I *dident* measure it.

Q. How big a hole did it leave in the log?

A. Why just a small one.

Q. How big a piece was left standing on the stump?

A. Not a very big *pieve* I *dident* measure it.

Q. Was the piece that was left attached to the stump as much as a foot or more in length?

A. No sir.

Q. How long was it?

A. I *couldent* say, I can't give any impression.

Q. As a matter of fact don't you know that there was no piece pulled out of the tree and left in the stump at all?

A. Yes sir there was a little hole in it where it had fell and a piece where they had cut the tree.

Q. Don't you know that there was a hole in the top of that stump where a piece had pulled out and left to the log and that hole was a foot or more deep?

A. No it *wasent* a foot.

Q. Well if you know it was not a foot tell us about how deep it was?

A. I *couldent* tell point blank it might be three or four inches.

Q. You have been there several times to look at that log *havent* you?

A. Yes sir.

Q. How many times?

page 262.] A. Why I have been there a good many times, I suppose some eight or ten times.

Q. You have been taking other people there also have you not. To look at it?

A. I *dident* take no body there but Mont Charles.

Q. How long have you been working with Mr. Kings representative?

A. Why I don't know that I have been working any for them.

Q. You mean that you have never gone any place for them or done anything for them or agreed to do anything for them and do you further mean that they have never paid you for doing anything for them?

A. I come here for them, they sent for me to come here, I have not *agree* to do anything for them. Yes I went down to Ashland to a show and Watkins Blankenship wanted me down there with him and they paid me for my time, some $7.50 I was down there some two or three days.

Q. Who paid your rail road fare and hotel bills?

A. *Witkins* Blankenship paid the railroad fare, I don't know who paid the hotel bills, Watkins said he would settle it.

Q. That is the time that you went down with Watkins Blankenship is he the same man as J. N. W. Blankenship?

A. Yes sir.

Q. How did you come to go down there?

A. Watkins told that there was a show down there and he said that Wilder and Dixon was down there and I went down with him.

Q. What did Blankenship tell you he would give you if you would go?

A. He *dident* say he would give me anything, he said he would bear my expenses if I would go down with him.

Q. Have you never stated that he told you he would give you $1.50 a day and bear your expenses.

Objected to by defendant King.

A. No sir. He told me if I would go he would bear my *espenses.*

Q. I will ask you now if on the 5th. day of May
page 363.] 1902 in the town of Williamson before William O. Brian a notary public you did not state under oath

that Watkins Blankenship told you he would give you $1.50 a day to go down there with him and bear your expenses?

Objected to by defendant King.

A. I dont recollect nothing about the $1.50 but I recollect about him telling me he would bear my expenses.

Q. Were you not at the time and place referred to asked the following questions and did you not make the following answers under oath. "Who got you to go *to go* down to the Ohio River?" A. Watkins Blankenship. Q. What did he say to you? A. Why we was over at Buchannan Court and Watkins told me that if I would go down with *he* to the big show he would bear my expenses? Q. Bear expenses and do anything else? A. Bear my expenses and pay me $1.50 per day."

Objected to by the defendant King.

A. I was *the* but I dont remember about Watkins paying me a $1.50 a day but the others I recollect.

Q. Do you say now that you did not make those statements?

A. Yes sir I made a statement here at Williamson but I dont recollect about saying anything about the $1.50 a day.

Q. You went down to Ashland with Watkins did you?

A. Yes sir, we went down to *Catletsburg* and went across the Ohio River and that is what they called it, it was strange to me.

Q. Who did you meet at Ashland?

A. I saw Colonel Wilder and Judge Stiles and Dixon.

Q. Did you have any talk with them?

A. Yes sir.

Q. After you talked with them where did you go?

A. Why I came back home the next morning, that is I got on the train the next morning and come up the line.

Q. After you went across the Ohio River did you make any statement to Colonel Wilder or Judge Stiles?

A. I told Judge Stiles, he was asking about these

page 264.] corner trees.

Q. Was that statement in writing?

A. Yes sir I *aint* no scholar he appeared to be writing something down I dont know what it was.

Q. Where were you when that writing was being done?

A. Across the Ohio River. Ashland, I think what they called it.

Q. Where were you when they paid you?

A. It was across the Ohio River, back on this side, at Catlettsburg, I reckon what they called it or Huntington one, I was a stranger.

Q. You swore to the affidavit that Stiles *Drew* did you?

A. Yes sir.

Q. Who swore you to it?

A. Watkins Blankenship.

Q. Where?

A. At this side of the river at Alnwick, on Tug River.

Q. On which side of the river?

A. On this side.

Q. What did he say to you when he swore you?

A. He pulled out his *papaer* and said "You know the meaning of this thing do you? and I said "Yes I think I do."

Q. Is that all he said in administering the oath?

A. Yes sir.

Q. Did he read it to you?

A. No. sir.

Q. Have you a copy of that affidavit?

A. No sir.

Q. Did anybody else read the affidavit to you?

A. No sir.

Q. Can you *furnished* a copy of that statement or tell me where I can get it?

A. No sir I cant.

Q. What went with it after you swore to it?

A. Watkins Blankenship put it back in his

page 265.] pocket.

Q. You saw the two poplar trees, the stumps of

which still *remain* remain in the small branch at Dan Justices house a number of times did you?

A. Yes sir.

Q. You saw corner marks on the lower one did you not at the time you were in there looking for the line between the Lonhart and the Watkins land?

A. I never saw no marks on the poplars at all, I saw corner marks on the cucumber.

Q. That is what you swore to in the affidavit you made before Watkins Blankenship?

A. Yes I told Judge Stiles that I *dident* see no corner marks but on the cucumber.

Q. That was also in the affidavit you swore to before Blankenship was it not?

A. Yes sir.

Q. So in that affidavit you swore that you did not see any marks on the two poplars or either of them, did you?

A. Yes sir as I recollect at this time.

Q. You had made a different statement before that time had you not?

Objected to by defendant King.

A. I dont recollect making any?

Q. Did you not on the 23rd. day of August 1901 on the porch of the house of Dan Justice in the presence of C. W. Campbell, C. L. Gaujot Harve Charles, Daniel Justice and his family and J. A. Sheppard, make the following statement: "About seven or eight years ago I was in the hollow where Daniel Justice lives looking for walnut timber and in coming out of the branch noticed three hack marks on the east side of a poplar tree which is the lower stump shown by me to Campbell, Sheppard and Gaujot and others today. The marks looked very old, as if they had been made many years before by a tomahawk or a hatchet and had all healed over. I know how corner trees are marked and these marks looked like corner marks. I did not examine any further, merely looked at those marks in passing and noticed that they looked like corner marks. There were two

page 266.]

other poplars and a sugar tree standing near by but I did not examine them for marks I was looking for walnut timber. I have seen the poplar stump today and *pounted* out the one I saw the marks on and the side where the marks were. The sugar tree is gone and corn growing where it stood. I did not notice any beech marked as a line tree or otherwise. I am 40 years old, born and raised in Buchannan County Virginia, live in a mile of the two stumps; lived on creek waters about twenty years."

A. I told Mr. Sheppard that I saw a tree there—a marked tree *thee* and he thought that that stump was it and I told him that I thought it was but I afterwards got to studying about it and Mont and George got to talking with me—I saw I was wrong and that it was not a poplar that was marked but a cucumber

Q. Now tell me whether or not you made the statement I have just read to you?

A. Yes sir I told him that. I made the statement the first time and after I got to studying about it I saw I was wrong that instead of it being a poplar it was a cucumber. Mont Charles was with me and told me that I was mistaken that it was a cucumber.

Q. How long was it after you made that statement to us until Watkins Blankenship took you to Ashland, to see Wilder and Dixon?

A. I dont remember how long it was.

Q. It was the following March or April was it not?

A. It was along in March I reckon.

Q. It was not until after you saw them and made the affidavit that it was a cucumber you saw marked instead of a poplar that you told me that you was mistaken about?

A. Yes sir.

page 267.] Q. You never did say or intimate to Campbell, Gaujot or me that you had been mistaken about your statement to us until long after you had made the affidavit for King's representatives that it was a cucumber and not a poplar that you saw marked, did you?

A. I dont remember of seeing you any more not till I made the other statement, that is Sheppard and Campbell, Gaujot he stayed

up there. I might have seen them but I dont remember it.

Q. Now I insist that you answer my question?

A. No sir I dont remember of saying anything about it.

Q. When did you change your opinion about the marks on the poplar

A. Why I seen Mont Charles and we was talking about it and we found the stump above there and I found I was mistaken.

Q. When was that?

A. Directly after Mr. Sheppard and Gaujot was up there?

Q. Was it before Mr. Gaujot went up there to survey?

A. I dont remember but I think it was.

Q. You saw Mr. Gaujot frequently after that did you?

A. Yes sir.

Q. His surveyors camp was within a mile of your house for a month was it not?

A. Yes sir about a month I reckon.

Q. During that time you saw him almost every day *dident* you?

A. No sir, I saw him, I would go up there and stay with him and I would see him every few days.

Q. You worked some for Mr. Gaujot when he was there having the lines run to and from these same two poplar stumps and meandering the creeks, etc., did you not?

A. Yes sir I worked four or five days for him.

Q. What did you do for Mr. Gaujot on that sur-
page 268.] veying?

A. Why I helped hunt for corners and line trees and cut some brush.

Q. You was acting in the capacity of guide was you not in the finding corners and lines of smaller surveys in the locality of the poplar stumps?

A. Yes that is what they was hunting for. When we started to run from the White oaks Stone told me to hunt for lines and marked timber.

Q. And during all that time you never mentioned to Mr.

Gaujot the fact that you had changed your opinion about the marks being on the poplar?

A. No sir.

Q. When Campbell, Gaujot and I were at Justice's with you on the 23rd. of August 1901, you took us up to the stump of the poplar you told us you had seen marked as corner tree and with *you* hand and your knife indicated on the stump the sides of the tree on which you had seen the marks, did you not?

A. Why Mr. Campbell and Gaujot and Sheppard was up there and Daniel Justice and I told them—Mr. Sheppard *axed* me whether I seen that mark and I told them I seen a tree that stood there that was marked—was close to there and when I was down here I told them I was mistaken that it was a cucumber, and *wasent* the stump that I showed them.

Q. Now answer my question, did you not on that occasion point out to Campbell, Gaujot and me the stump of the lower poplar tree as the one you saw marked as a corner tree?

Objected to by defendant King on the ground that the question has been asked and answered.

A. I told him that but I was mistaken in it.

Q. Did you not point that stump out to us as the stump of the tree you had seen marked as a corner?

A. Yes sir I did.

page 269.] Q. You took us right to that stump did you not?

A. Yes sir.

Q. You indicated on the stump the sides of the tree where you saw the marks did you not?

A. Yes sir I told Sheppard the tree that I saw there was marked with six hacks on it.

Q. And with your hand and knife you showed us on the stump the sides where the marks were on the tree?

A. Yes sir I told Mr. Sheppard. We was all there and he *axed* how the tree was marked and I put my hand and showed how the tree I saw was marked.

Q. And you told us that that was the stump of the tree you saw marked, *dident* you?

A. I dont remember point blank but I told them that I saw a tree there marked and that that looked like the one.

Q. Dont you know that you told us that was the stump of the tree and showed us how you came down the hill by it?

A. I showed them how I came down the hill but that I saw a tree marked there and that looked like it, the ground *wasent* cleared then, there was no timber cut then at all.

Q. On page 269 you say you told me that you saw a tree there marked and that I thought the stump was it and that you told me you thought it was, do you mean to say that I was suggesting to you there that that was the stump?

A. He asked me was that the tree I seen marked.

Q. What I want to know is did I take you to that stump and tell you that it was the one or suggest to you that it was the you saw marked or did you take me and the other men to the stump and show it to us?

A. Why these boys were all up there at them stumps when I *went* to them. *Thay* was looking at them stumps when I *wnet* up,

Q. Did I show you the stumps and tell you that

page 270.] I thought it was the one you saw marked? or did you show it to me and tell me that you *thoght* it was the stump of the tree you saw marked?

A. I showed it to you, and said that I thought it was the one that I saw marked, at that time.

Q. How large is the cucumber stump that you afterwards concluded was the one you saw marked?

A. Why I though it was about twenty-four inches but after I looked at the stump I found it would not go over eighteen or twenty, inches, the white of it had rotted off and most all of the bark was off of it.

Q. Did you afterwards examine the cucumber tree before you changed your opinion?

A. Yes sir. Mont Charles talked with me about it and then I went and found the stump, the tree had been cut.

Q. Don't you know that the *existance* of that cucumber tree and that it was marked as a corner was talked about between Dan

Justice and you in the presence of several of us *amount* them Campbell and Gaujot, on the very day that you showed us that poplar stump?

A. Yes sir we was talking about it that day.

Q. And then when you was back there with the surveyor running the lines to and from the poplar stump you showed them the cucumber stump you had told us about, did you not?

A. I dont remember, if I did I dont remember it.

Q. Don't you know that you while acting as guide for surveyor Stone in locating the lines of smaller surveys, showed Stone that cucumber stump?

A. No sir I dont recollect that I did.

Q. On the day you showed us the poplar stump Dan Justice was telling us about the cucumber being marked and pointed out where it stood up the hill above the poplars while we were there at the poplar stumps, *dident* he?

A. If he did I dont recollect any thing about it.

page 271] Q. You and Dan however, in our presence did talk at that time about that marked cucumber?

A. I never recollect it if we did.

Q. Have you not just stated that you did talk about it that day?

A. We might have talked about it but I dont remember about it now.

Q. After you showed us the stump and how the tree was marked I mean the lower poplar stump and after you worked with Mr. Gaujot's surveying corps you went out with Watkins Blankenship and met Kings representatives and after that you told us you was mistaken that it was the cucumber you saw marked instead of the poplar, is that the fact.

A. Yes sir after I come down here I told you I was mistaken that it was a cucumber I saw marked instead of the poplar.

Q. And you were down here on the 5th. day of May, 1902?

A. I dont remember what time I was down here.

Q. Did I not ask you while we were all there at the poplar stumps on August 23rd. 1901 if those poplars could have been a corner to some small survey in there and did you not say no, that

you knew all the corners of the smaller tracts in there and none of them would run to those poplars?

A. If I did I dont remember it.

Q. You told us then that you knew the corners of the smaller surveys there and that those poplars were not corners to any of them *dident* you?

A. I might have done it but I dont recollect it.

Q. In fact you did know the corners of the smaller surveys that were near these poplar stumps?

A. I knowed where some of them was but *dident* know all of them.

Q. And you afterwards pointed them out to surveyor Stone?

A. If I did I dont recollect it. I dont think I was there helping him when he surveyed that place.

page 272.] Q. You spoke in your examination in chief of a hollow place or hole in the ground about fifteen feet east or south east of the lower poplar, what did that look like?

A. It looked like where a tree had rooted up.

Q. You also spoke of rolling a white oak log, do you mean that white oak log was the tree that had stood in that hole where the tree had rooted up?

A. Yes sir, it looked like it had the way it fell.

Q. Don't you know that on the day we were at the stump with you the *questionm* of what tree had fallen from that place was mentioned and that neither you nor Dan Justice remembered seeing any log lying there that would indicate what kind of a tree that had been.

A. No sir I don't recollect nothing about that.

Q. Did you ever at any time mention to Campbell, Ganjot or me anything about an oak tree falling from that place or about rolling an oak log away from there?

A. No sir I don't recollect if I did.

Q. You have a promise from some of Kings representatives that your land will be released have you not?

A. No sir.

Q. You sold a piece of your land to Riley Lester did you not?

A. Yes sir I sold it to him.

Q. Have you not told Riley Lester within the last two or three months that you would *you would* have the land you sold him released by King very soon and you would then be able to make him a good—Objected to by defendant King.

A. No sir I told him that *bif* he lost the land and I *couldent* buy it back for him and *couldent* beat the judgment I would give him another piece of land—done give him another piece provided he lost that piece and drew up a *writted* contract with him to give him the other piece of land *provideing* he lost this piece. If we *couldent* agree we was to pick two men and whatever they done we was to stand to it.

page 273.] Q. But before you gave Riley the written contract did you not tell him that you was going to get the land you sold him released by King?

A. Why he wrote to Mr. Sheppard he was aiming to fee him and I told him not to do that and I would *gave* him up this other piece of land if lost that piece. I told him that I would try and get it released by King. I *dident* tell him that I would do it but that I would try it.

Q. And you are trying it *aint* you?

A. No sir after I gave him up that piece I never said anything more about it. I told him to wait until Court and I would try and get the judgment set aside.

Q. As a matter of fact Dan Justice and Watkins Blankenship and you are helping King out up there *aint* you?

A. I don't know Dan and Watkins done that is the talk in the county. I don't know as I am helping him I have been a witness for him.

Q. You get that talk partly from Dan and Watkins don't you?

A. No Watkins he has got some lands he is trying to buy his lands I think.

Q. And Dan has the promise that they will give him a hundred and fifty acres of land to help them?

A. Yes sir Daniel told me that they had promised him a hundred fifty acres on the Race Fork.

RE-EXAMINATION.

Q. What interest if any, did you have in the land you formerly claimed on Knox Creek at the time this matter about corners first came up, by that I mean had you disposed of any portion of your land prior to that time and if so what?

A. Yes sir I had sold Riley Lester this land.

Q. How about coal and timber?

A. I sold the poplar timber to Jim Pinson and Dick Ferrell and the coal I got in a law suit with a man by the

page 274.] coal I got in a law suit with a man by the name McCurdy of Richmond and we compromised the suit and I gave him the coal and he gave us the timber and land. That is 2500 acres we all made him a deed to.

Q. How much of the 2500 acres did you claim at the time of these sales?

A. 200 acres.

Q. How long before the sale of the surface to Lester did you dispose of the timber and coal?

A. I reckon some ten or twelve years.

Q. How long ago did you sell the *surfact* to Lester?

A. Along last winter some time or fall.

Q. Has any one representing King promised you in any way to release any part of that land or do anything else with reference to it?

A. No sir.

Q. Did you ever tell me. (Stiles) anything about the white oak log that you rolled away from the depression near the poplar stump at Dan Justice's until I asked you about it on the stand this morning?

A. No sir I *dident*.

Q. You may now give a more particular description if you can of that log and where it lay with reference to that depression at the time you rolled it away or helped do so?

A. I layed down below them stumps—the poplar stumps there called corners. I *couldent* state point blank it was probably some ten or twelve or fifteen feet away from the depression and may be not that much.

Q. What was the appearance of the *but* end of it?

A. It was just a tree rooted up and fell off down the hill.

Q. Well describe the appearance of the *but* whether there were roots or not?

A. The roots had about all rotted off.

Q. Was the tree lying endwise or sidewise towards the depression?

A. It was pitched of sorter down the hill, so *tht* the top was kind of quartering around the hollow.

page 275.] Q. To what extent was it decayed?

A. Most all the white oak was rotted you could stick your ax or a stick in it. It was an old dry rotten log.

Q. What surveying did you help Stone do?

A. Why I went on top of the hill at the left hand fork and set in with him and went across Lesters Fork. I helped him four or five days, I think we run on towards Knox. I *dident* go to the head of Knox.

Q. At the time you were with Campbell and Sheppard and others at the poplar stumps of August last year, did you take them to the stumps or did you go there with them or after they were there?

A. I went there after they were there. They was at the stumps when I went up.

Q. State in your own language what you told them about having seen a marked poplar tree and about the stumps or either of them being the stump of the tree you saw?

A. I told them there was a *tre* marked there and after I come down here I told them I was mistaken that it was a cucumber instead of a poplar.

Q. Had you at that time been to the stump of the cucumber after the land had been cleared?

A. I *hadent* been to it until I went to hunting for it after Mont said that I was mistaken about.

Q. How far from the poplar stump that you told Mr. Sheppard and Mr. Campbell and others you thought was the tree you saw did you find the cucumber stump to be?

A. It is some twenty-five or thirty feet I reckon.

Q. What was the condition of the field at the time, was it cleared or was it in standing corn where *therese* stumps were?

Q. The ground was cleared and I think planted in corn

Q. Did you ever see any marked timber of any kind anywhere in the neighborhood of any of the stumps that you have spoken of at any other time than you and J. M. Charles and

page 276.] George Charles were hunting that line in there?

A. Why we found the trees upon top of the ridge, oak trees that were corners.

Objected to by contesting defendants.

Q. Was that the time you were hunting that line with the Charleses.

Objected to by contesting defendants.

A. Yes sir.

Q. Did you find any marked timber in there at any other time?

Objected to by contesting defendants.

A. Yes sir I have seen some old corners there—I saw some lynns up above these poplar stumps that they said was corners

Q. Who was the George Charles who was with you when you were hunting that line, where does he now live?

A. He lives on the waters of Race Fork.

Q. Were you acquainted with the lines and corners of the smaller surveys *upin* that Dan Justice hollow at the time you and the Charleses were hunting the Watkins line?

A. No sir I *wasent.*

Q. Did you find at any time whether the cucumber tree that

you and the Charleses saw was the corner of any tract of land, if so of what?

A. No sir.

Q. Did you inform any one that you were mistaken about the tree you saw, being a poplar after you had examined the cucumber stump and before you mentioned it to Mr. Sheppard, if so whom and when?

A. No sir I dont recollect that I did.

Q. Do you know whether Dan Justice or any one knew that you were mistaken

Objected to by contesting defendants.

A. I dont know whether they do or not.

Q. What was the *ocasion* of your telling Mr. Sheppard of the mistake and how did you come to mention it to him?

A. When I come down here, they told me up on Knox that if I *dident* come down and give evidence they would send a detective after me and make me come down, and *wen* I come down I told them I was mistaken as it was a cucumber I saw and not a poplar marked.

page 277.]

Q. Who told you up on Knox that they would have you arrested?

A. Hiram Hall.

Q. Who is Hiram Hall?

A. I think he is an officer, he was Deputy Sheriff for a while but I dont know whether he is now or not.

Q. Do you know whether Hall has been active in getting witness from Knox Creek for Mr. Sheppard's clients?

A. No sir I dont.

Q. Did he come down with you at the time you came here in May?

A. No sir nobody come but me and Daniel Justice and Mr. Gaujot was along and another man—a detective they said.

Q. What did they do with you after they got you down here?

A. Mr. Gaujot told Mr. Simpkins to take me and Mr. Justice

and take care of us and they took us out to Mr. Gaujots—Earnest Gaujots, I think

Q. Did Simpkins appear to be an officer, or was he armed?

A. I don't know whether he was an officer or not, it looked like he had a pistol packing under his coat.

Q. How long were you kept here?

A. We come down about midnight and stayed all night that night and left the next day.

Q. Did you sign any paper of any kind at that time?

A. Yes that was the time that they took my evidence.

Q. Where was that taken?

A. Here in town, down below Bevins saloon I think it was.

Q. Was the paper prepared there?

A. No, we took it at the old man. Gaujot's and signed the *papears* down below Bevins.

Q. Do you know what was in the paper when you
page 278.] signed it?

A. I dont. He read it over about them stumps. Not only the way *hee* they read it over to me about them stumps is what I know was in the paper.

Q. Have you ever been engaged in timbering, cutting and handling timber?

A. No not lately I aint, I used to cut some.

Q. Have you done considerable timbering in your life time?

A. Yes sir I have done right smart of it.

Q. Have you ever had any acquaintance with Colonel Wilder of Mr. Dixon or myself (Stiles) prior to seeing us at Ashland last March?

A. I seen them here at Abingdon a time or two but never had a talk with them.

Q. You were asked by Mr. Sheppard something about a statement made by you at Ashland and taken down by me at the time in the form of an affidavit, which you afterwards swore to before J. N. W. Blankenship, I will hand you this paper and will read

the same to you and ask you whether it is the same document referred to

(Here counsel reads affidavit)

The foregoing affidavit as read by counsel to the witness is herewith filed marked Reece Davis No. 1

A. Is that the statement that you made to Colonel, Wilder, Mr. Dixon and myself at the time referred to and which Blankenship afterwards swore you to?

A. Yes sir

Q. Was the same read over to you as I have now read it in the presence of J. N. W. Blankenship before you left Ashland and before you swore to it?

A. I reckon it was I have forgotten about it but since I have been studying about it I reckon he read it over to me.

Q. Where was Blankenship when he swore you page 279.] to it?

A. In Buchannan on this side of the river here at *alnwick*, he said it was in *Buchannan*.

Q. Which side of the river was he on.

A. He was in a boat and I was on this side.

Q. In this affidavit I take you down as saying that the cucumber stump was about twenty-five to fifty yards from the poplar stump, in your testimony I think you gave the distance as twenty-five feet, which is nearer correct and what according to your best estimate is the distance between the poplar stump and the cucumber?

A. The distance is twenty-five or thirty feet

RE CROSS EXAMINATION.

Q. Both Daniel Justice and Watkins Blankenship are here at present are they?

A. Yes sir.

Q. In your re-examination you say that you found the lynn corner on the side of the hill above the *the* two poplar stumps, when did you find that?

A. Why Steve Baldwin was surveying was the first time I ever

saw it. Westley Justice, old man Pleasants and George Charles were along. This has been some five or six years.

Q. How were the lynns marked?

Objected to by defendant King

A. They were marked sorter running down the mountain by them stumps by and across the creek and the other marks were sorter down the other way.

Q. Is that the corner that is called the triple lynn?

A. Yes sir.

Q. What survey was Baldwin and you all running when you ran to that triple lynn?

A. They said that it was the Coleman survey.

Q. Where did that lynn corner stand?

page 280.] A. Above them poplar stumps.

Q. And above and rather to the left of a cliff of rocks, did it not?

Objected to by the defendant King

A. Yes sir.

Q. What corner of the Coleman survey did Baldwin run from to that lynn there?

A. He ran from the gum and dogwood down there at that sulphur spring hollow.

Q. Did you find the lynn corner at the end of the distance? called for in the grant?

A. No sir.

Q. Did you find the lynn corner at the end of the distance? gave out?

A. No sir.

Q. How far did you continue the line before reaching the triple lynn corner?

A. I *couldent* state point blank blank but it was a right smart piece from where the calls gave out until we went on and found the lynn corner.

Q. That corner was then standing was it?

A. Yes sir. It aint standing now Dan Justice said he cut it down, some body cut it down.

Q. What corner did you run to from there?

A. Across the creek at Daniels house to a birch, oak and hickory

Q. Have you since pointed out that gum and dogwood corner, the lynn corner and the *burch,* oak and hickory corner, to any other surveyors and have you helped any other surveyor run those lines, since that time?

A. Yes I helped Reddy run that line—the same line from the black gum and dog wood.

page 281.] Q. In running the line from the black gum and dog wood, did Reddy run to the triple lynns?

A. No he *dident* run to the triple lynn on that line but he run from the birch, oak and hickory to the triple lynn.

Q. Did you show him the stump of the *lriple* lynn corner and is that what he ran to from the birch, oak and hickory corner?

A. Yes sir I showed him where the stump was said to have stood, when I first saw it it was trees, and that is what he ran to from the birch, white oak and hickory.

Q. As I understand you, you and Dan Justus took a flag and went to the stump of the triple lynn and Reddy ran from the birch, oak and hickory to the stump of the lynn corner, is that right?

Objected to by the defendant King, on the ground that it is not cross examination and the question is leading and this objection goes to all the examination with reference to the triple lynn

A. Yes sir that is the way I recollect the way it was.

Q. In the affidavit you made before Watkins Blankenship, who signs it J. N. W. Blankenship, Justice of the Peace, you state that Mose Charles told you that he "Had seen the trees standing and marked and that they were the corners, do you now swear that Mose Charles told you he had seen any marks on those old down rotten poplars, where you got a piece of the down sugar tree?

A. No sir he told me that he had seen those trees marked eighteen or twenty years ago.

Q. Do you mean the poplar trees?

A. The poplars and sugar tree.

Q. Now is it not a fact that Mose Charles never claimed to have seen marks on anything except the down sugar tree?

A. As well as I recollect he told me that he seen all three of the trees marked.

Q. Your affidavit further says in relating what you saw and what occurred on the day that you were at the *to* corner near Dan Justus house and in speaking of the two poplar stumps "Lying near said *Sylump* were two trees of the same size as two of the stumps"? is that true?

[page 282.]

A. As well as I recollect that is right.

Q. *No* dont you know that there was no two trees lying there

A. Why the stumps was there and the trees was there. Oh no they were not lying there at this time.

Q. They were not lying there when Watkins Blankenship swore you to that affidavit, neither were they?

A. No only what they said about that log, it looked like the log down in the hollow come off of that stump.

Q. I am not asking you about the log in the hollow, now will you please tell me, if on the day we were at the stumps there were two trees, the size of those two stumps lying near them?

A. No sir only down in the hollow, there were any there I *dident* see them, only them in the hollow.

Q. Do you now state that there were two trees, the size of those stumps lying down in the hollow?

A. No sir, Watkins measured the size of one of the logs in the hollow, I think it was about the size of the lower stump.

Q. The log that Watkins Blankenship measured is about eighteen feet long, is it not?

A. I *couldent* say, it looked like eighteen or twenty.

Q. You further say in your affidavit that the tops of the trees

"Appeared to have been burned right where they lay", and that said Justus said these logs came from the top of the hill and that he rolled them down there, this would be impossible on account of the lay of the land and the great number of stumps between". Now do you say that on the day we were there you saw where the tops of these trees had been burnt just where they fell or had not a great number of logs been piled into the hollow and burned together leaving only a few chunks?

page 283.] A. Yes sir there were a lot of logs laying together looked right where they had been burnt in the hollow.

Q. Would it be impossible to slip a poplar saw log eighteen or twenty feet long from a point up on the hill above the poplar stumps down to where the poplar log is in the hollow?

A. A man could slipped it but he couldent rolled it.

Q. Were you present when Dan Justus first spoke to Campbell and me about *maeks* on the poplar trees?

A. No sir I dont remember if I was.

Q. Did you hear Dan describe to us the marks as he saw them on the poplar trees?

A. Yes sir I heard him tell Mr. Sheppard the trees was marked

Q. Your affidavit says "That the first time said Daniel Justus spoke of the marks on said trees he spoke only of marks in the bark and said nothing of any marks in the wood but later and after talking with Campbell and Sheppard he claimed to have seen marks as if of a hatchet some six or eight inches deep in the wood," did you understand that statement in the affidavit when you swore to it?

A. I dont know only what Blankenship told me when he got into the boat he pulled it out and said you understand the meaning of *theis* do you and I said yes I reckon I do.

Q. Was that all he said to you?

A. Yes sir.

Q. Did he repeat an oath to you such as this "You do solemnly

swear that the facts set forth in this affidavit are true, so help you God?

A. Yes sir.

Q. And you swore to the statement I have read to you, did you, knowing what it meant?

A. Yes sir, I reckon I did.

page 284.] Q. Do you not now know that that statement is false? that is that you falsely stated what was not the facts in this affidavit about Dan Justus first saying there were marks in the bark of the trees and that after Campbell and Sheppard talked to him he said there was marks in the wood.

Objected to by the defendant King and request that the witness be permitted to state what the facts are as he understands them as to what Justus said about the marks in the bark and in the wood.

Counsel for contesting *defedndats* states that he asks this question for the purpose of contradicting the witness in the event he still adheres to his statement in the affidavit and is entitled to a direct answer.

A. No sir I stated that was true all that I knowed about it. Justus told Mr. Sheppard there one day, I heard him tell him, that the marks looked like *the* had been marked with a hatchet or tomahawk

Q. Where did you hear Dan Justus telling us about the marks?

A. Right at them stumps.

Q. On the day you were there you knew and understood from all of us that Dan Justus had showed us the stumps and told us about the corner trees having stood there on the day before, did you not.

A. No sir, the boys were up there but I dont know what he told them, I reckon they were there—they went past my house, I *wasent* up there that day.

RE DIRECT EXAMINATION.

Q. Who first suggested your coming over to Race Fork to Dan Justus's to meet these other people about those stumps?

A. As well as I recollect it was Riley Lester.

Q. And who first talked to you about the sugar snag and the poplars over on the ridge of Paw-Paw?

page 285.] A. Why Mose Charles.

And further deponent saith not.

his
REECE x DAVIS
mr.

5 days and 85 miles.

page 286.] JAMES HATFIELD, a witness introduced by the defendant H. C. King, after being first duly sworn, upon oath testifies as follows:

EXAMINATION
By Judge Stiles.

Q. State your age, residence and occupation?

A. Sixty-seven this November; Mingo county, Guyan River; farming and saw-logging.

Q. How far do you live from the mouth of Gilbert creek?

A. I live about a mile and a half, I guess.

Q. Where were you born and raised?

A. I was born on Ben creek in this county.

Q. Where have you been raised—in Mingo and Logan counties the most of your life?

A. Yes, sir. I moved away after I was married to Wyoming county, ten or twelve year, and then come back.

Q. How long have you been acquainted with Gilbert creek, particularly the locality about the mouth of the creek?

A. I have known it ever since I was big enough to go to mill.

Q. At about what age would that be?

A. Oh, it would be ten, or twelve, or fourteen; along there.

Q. Have you lived the most of your life, since you were ten or twelve years old, in the nighborhood of the mouth of that creek; except the time you were in Wyoming county?

A. Yes, sir. I dis-remember how many years I was up there. Ten or twelve or fourteen.

Q. How does the location of the mouth of that creek com-

pare with its location at the time of your earliest recollections; has there been any material change in the place at
page 287.] which it enter Guyan River?

(The foregoing question objected to by contesting defendants.)

A. I don't think there has been any. It is wider, the creek is, but I think it flows out about the same direction as when I first saw it.

Q. What is there, if anything, that marked the point at which it entered the river when you first remembered the creek?

A. Well, there was an old road coming up the river and crossed right about *furnenst*—near *furnenst* the mouth of the creek. The mark is on one side of it yet, and as well as I recollect come across at that ford. You could go either to the upper side of the creek, or take the lower side.

Q. What is the position of that old ford at the present time, with reference to the mouth of the creek, the position on the opposite side of the river?

A. From the creek?

Q. Yes?

A. Why the lower side of it would be bottom. The road cut up under it and the crossed right it, or near the lower end of the shoals above the mouth of Gilbert.

Q. I mean where are the remains of that old fork at the present time, with reference to the mouth of the creek?

A. Just about *furnenst* it, I think.

Q. Is there a growth of timber of line of trees along the bank of the creek on the lower or left hand side, going down?

A. Yes, sir.

Q. *Described* them, them trees, as to the size and apparent age, etc.?

page 288.] A. Well, I don't know. I never did know. particularly, what size they are. They are pretty good sized trees. They cut the tops out of them and they are low. Twenty-four or twenty-five inches in diameter. I never measured them. I think they are that large.

Q. Has that line of timber stood in the same place since you first remembered the place?

A. I think they were there the first time I recollect of noticing them. The timber stood there. Of course they were not as large then as they are now. There was a good row of them standing there, as well as I recollect. I know before I was grown, Alex Sprat had a young mare that died and I was passing there and a buzzard flew up in that timber.

Q. Do you know where it has been contended by some persons interested adversely to Mr. King, that the creek formerly flowed into the river?

A. I never knowed it.

Q. What, if anything, stood on the upper side of the creek near its mouth, when you first recollect it?

A. I have no recollection of any timber but that elm and sycamore. Mr. Sprat's girls had a washing place under a big elm that stood there. I think it was that big elm, and there might have been a sycamore tree also, just below it, between the sugar tree and the creek, and they used to wash their clothes under those trees. The elm is there yet but the sycamore tree is not there, and they stood just above the end of the little ford that crossed the creek.

Q. (By Attorney Sheppard: Do you mean the ford of the creek?

page 289.] A. Yes, sir.

Q. (By Judge Stiles: Do you remember anything about a peach orchard that stood on the upper side of the creek, in old man Sprat's time, if so, you may describe where that stood?

A. The peach orchard, that stood right up at the upper end of Dave Trent's place, and the best of my recollection the most of those trees were up on the upper side of the road, up on the hill.

Q. Did the land at that time extend down to the river, along said *the* creek as it does at the present time?

A. Well, about so. I don't see much difference. It may be

a little wider, though. Down about where the trees are is not so wide, it is cut off.

CROSS EXAMINATION

by Mr. John A. Shepperd.

Q. How many times have you testified as a witness for Mr. King, in the various cases involved in the King tract of land?

A. About three, I believe, besides this, as well as I recollect.

Q. Did you testify at Harrisonburg in 1895?

A. No sir.

Q. At Parkersburg in the two cases?

A. Twice there and at *Abinnon* Abingdon once.

Q. You know that evidence has been given in each of the trials, in which you testified, on the question of the former location of the mouth of Gilbert creek, do you not?

A. I guess I do.

page 290.] Q. You know that persons contesting King's claim have summond a number of witnesses to each of those trials, to show that Gilbert creek originally emptied into the river some distance above its present mouth, do you not?

A. I think they have some witnesses summond for that purpose.

Q. You further know that at all these trials, Mr. King has contended and offered evidence to prove that Gilbert Creek emptied originally into the river substantially where it now empties?

A. Yes, sir, I think that was his contention.

Q. And you further know, do you not, that you have never testified on this subject before?

A. I have.

Q. Tell me then when you testified on this subject?

A. Parkersburg.

Q. In which trial?

A. I *dis-remember* which trial it was.

Q. Who was the judge presiding at the time?

A. Really don't know Mr. Shepperd. I know they asked me the question there, but I didn't pay attention to who was the judge.

Q. I will ask you now if Judge Goff was presiding when you gave such testimony?

A. I told you I don't know which court it was, one or the other. I told you that I didn't know, therefore I cannot tell you.

page 291.] Q. Do you remember where Isaac Sprat lived when you were a boy?

A. Yes, sir.

Q. How old were you when you first remember seeing the mouth of Gilbert Creek?

A. Well, I was ten or twelve or fourteen years old. Some where along there. My head would swim crossing the river on a horse behind my mother. I know it would make my head swim. I wasn't use to the river. I was small and had to hold on to her.

Q. Where did you then live?

A. I lived on Ben creek.

Q. How often were you at the mouth of Gilbert?

A. Oh, well, I don't know. I was over there on little business, sometimes visiting, sometimes sparking. I didn't keep account of the number of times.

Q. Do you give your recollection of where Gilbert creek emptied into the river, from the trips you have just mentioned?

A. Then and ever since in my life time experience and observation of the place.

Q. Do you remember a spring at the foot of the bank, near Isaac Sprat's residence?

A. I remember a spring and a spring-house, that they had at the foot of the bank going up there to the house on the upper side of the road, above the little bottom.

Q. Do you mean that the spring was on the upper side of the road?

page 292.] A. Not there, some place right close on the upper side of the road, as well as I recollect, as the road is now.

Q. I am not asking you about the present road; I want to

know where the spring was with reference to the road at that time?

A. Well, that road didn't run there then. It went down around that spring lot. The spring run down through the lot.

Q. Where was Gilbert creek with reference to that spring?

A. It was some distance.

Q. In what direction and where?

A. Right down towards the creek, about, I expect, any way 25 steps down to the main creek, where it come to the river.

Q. Do you remember some walnut trees that stood on the upper bank of Gilbert creek?

A. I remember some that stood up there in that lot, on the edge of the road. They weren't on the bank of the creek, though, I don't believe.

Q. Now at what time in your life do you say that the creek was 25 feet,—steps, below the Isaac Sprat spring, and at what time in your life was the creek some distance, as you call it, below the walnut trees?

A. Well, the walnut trees stood nearer to the creek than the spring, one did I know. I recollect it about 25 steps down to the spring from the middle of the creek. That was before the war sometime. I expect fifteen years.

Q. Mr. Hatfield, I will ask you to be more *difinite* as to the year or years that the creek was located as you have stated, with reference to the spring and the walnut trees?

page 293.] A. Well, I don't know what years it was. It was before the war sometime. I know the years it was but I didn't keep any account of it.

Q. Was it those located in 1858, or 1859 or 1860?

A. Well, if you would put it back about 1850 you would come nearer to it: Some where about that time.

Q. Then your statement is, that in 1850 Gilbert Creek emptied into Guyan River, about 25 steps below the Isaac Sprat spring?

A. Spring-house there might have two or three springs. He had one spring-house.

Q. The spring I refer to, was the one that was walled up with stone? Is that the one you speak of?

A. I don't know wherther it was all stone or not. I think there was some stone in it. It strikes me there was some plank in it. That is the spring I am talking about, where they kept butter and pies in.

Q. As a matter of fact there was only one spring there?

A. I don't know. There might have been more.

Q. Do you remember a large elm that stood right at the mouth of Gilbert creek, as it formerly emptied into the river?

A. No, I don't think there was an elm in the creek.

Q. I didn't say in the creek; at the mouth?

A. Which side of the mouth?

Q. Well, on either side, on the upper bank or lower bank?

A. I think there was an elm and sycamore both on the lower side. I don't remember of seeing any elm on the upper side.

Q. What has become of the large elm and sycamore that stood on the upper side of the mouth of Gilbert creek?

page 294.] A. They stood on the lower side of the creek, and I think they drifted out. I think they died and the water took them out. It strikes me that the sycamore died and then washed out. I don't remember what became of the elm. I guess it died.

Q. Do you not now remember that there are or were in 1895 and 1896, portions of the roots and stumps of that elm and sycamore standing?

A. Well, I don't remember anything about the elm. I remember seeing some little roots there, sycamore roots. I know just about where the sycamore stood on the lower side of the creek.

Q. And you state that those trees, the elm and sycamore, stood on the lower side of the mouth of Gilbert creek?

A. I remember the trees standing there; the sycamore in particular. I don't have much recollection about the elm. One sycamore was standing there and the creek cut under the roots and washed under the roots, and the roots were sticking out in the creek.

Q. Do you not also remember that there was a pool of water, deeper than the surrounding water, at or near the elm and sycamore?

A. Well, I think right around the edge of that sycamore was deep water there. It had washed under a right smart bit. The water was from three to four feet deep, I think, at a common stage.

Q. Those trees were unusually large, were they not?

A. I don't know Mr. Shepperd about the elm. I think I can recollect something about it. The sycamore was a pretty good sized tree. I can recollect about it. It was a tolerably large tree.

page 295.] Q. What is there now standing at or near the big sycamore and elm, or where they formerly stood?

A. There is a little bar of rocks.

Q. Are there any trees standing near them?

A. No, I don't think there is, not near the sycamore. I think it is a bar of rocks. I think standing near them just above them, on the other side of the creek, there are some trees, and down the river side there is a row of elms.

Q. You say on just above them, do you mean up the river or up the creek?

A. Up the creek, on the lower side of the creek, there is a row of trees standing there.

Q. You don't mean to say, do you, that Gilbert Creek now empties into the river where that large sycamore and elm stood?

A. No, sir, as well as I remember it empties in above it a little bit. It may not but that is my recollection.

Q. The creek then when you first remember emptied into the river on the upper side of what you remember as the large sycamore, and still empties into the river on the upper side of the place where the sycamore stood?

A. As well as I can place it, it runs in on the upper side. I believe you were there looking around, and I saw a few little roots.

Q. Who else was there when the location of the sycamore and elm was pointed out?

A. I don't know. I come up there one afternoon going across there and I saw some people there.

Q. You say I was there when those roots were

page 296.] found?

A I did not say it that way. I saw some little roots there.

Q. I wish you would describe more definitely where those roots are that you refer to?

A. Well, I don't know how I can more definitely than I have.

Q. Did you see the stake that was driven by R. P. Sprat, Doc Stafford and others on that day, as the former location of the three sugar trees?

A. I think I did. That is what I went there for.

Q. Where were the roots with reference to that stake?

A. I think up the river above.

Q. How far?

A. I don't think it was very far. I don't recollect the exact distance. I wasn't there when they were driving the stake, I went down with the surveyor, when you all went down to see the stake.

Q. Did you see those roots before you started down, or after you *down* down there?

A. Yes, before we started up there.

Q. Before you started up or down?

A. Up. I was on the lower side of Gilbert creek and saw you as you stopped up there, you and Sprat and Stafford. I was hunting around for roots. I was out on the bar, and I saw some sycamore roots.

page 297.] Q. We started from a small sycamore now standing at the place then pointed out by a number of old persons as the former location of the mouth of Gilbert creek, and went from there down the river to the stake

driven by Sprat and others. Now tell me, did you see the roots of the sycamore you speak of up there, before we went down to the stake, or did you discover the sycamore roots down where the stake was?

A. I discovered the sycamore roots before you started down.

Q. Then it was at the upper end of the lane that you found the sycamore roots, was it?

A. No, sir. No, sir. It was the lower side of Gilbert creek, where I saw the sycamore roots.

Q. Those roots were on the lower side of Gilbert creek?

A. Yes sir.

Q. As it formerly emptied into the river, as I understand it; now will you tell me, if the ones you refer to were on the lower side of Gilbert creek, as it now empties into the river?

A. Yes, sir, that is my recollection.

Q. Did you point them out to any one that day?

A. I don't think I did. I don't remember as I did. They were trying to point them out to me in the creek, and I picked out where I thought it was and saw some roots there.

Q. Now, Mr. Hatfield, don't you know that the roots that were pointed out to you, were the remains of that old sycamore and Elm, that stood in the edge of the river very close to the small sycamore that we started to measure from?

A. No, sir, I don't recollect whether you started from a sycamore, Mr. Sheppard. You went out above the sycamore, as well as I recollect.

page 298.] Q. Were you there when persons present dug down to the stump of one of the walnut trees?

A. No, sir.

RE-DIRECT EXAMINATION
by Judge Stiles:

Q. Do you remember about any one blocking some of these trees in 1895 or 1896, that stand along the lower bank of Gilbert creek, to ascertain the age of them?

A. I don't know who blocked it. There was a tree cut down, said to be by Alex. Trent and Lee Ellis. I didn't see it, that is the way they told me.

Q. Do you know what it disclosed as to its age?

A. No, sir, I don't. They said they took it to Parkersburg, and had it tested and wouldn't bring it into court.

Q. You never knew of any such block being offered in evidence at Parkersburg?

A. No, sir.

Q. Do you remember about what was the size of the tree that they cut down?

A. No, sir, I don't recollect. I guess it was 28 or 30 inches, I expect. I never measured it.

Q. Where did that tree stand, how far from the bank of the river; at the mouth of the creek?

A. Well, I don't know. I expect it was ten steps from the edge of the ford, where the stake was driven, up to the creek. I would make that as my estimation. I never measured it. I saw it sawed in *to.*

page 299.] Q. Did you see the measurement of twenty (20) poles made from the point up the river, down to where the stake that was driven that has been spoken of?

A. Yes, sir, I was there *wen* they run down there.

Q. Did the creek at any time within your recollection, empty into the river at the point from which they started to make that measurement down to the stake?

A. No, sir, I don't recollect that it ever run there.

Contesting defendants moved to strike out the answers of the witness, relative to the block taken from the tree and shipped to Parkersburg.

Here the notes of the foregoing testimony was read to the witness and verified by him, and by consent of the parties hereto,

the witness authorized the Commissioner to sign his name to his deposition when the same is extended.

And further this deponent saith not.

JAMES M. HATFIELD,
Signed by Commissioner.

2 days and 89 miles,

FLORA ANN HATFIELD, a witness introduced by the defendant H. C. King, after being first duly sworn, upon oath testifies as follows:

EXAMINATION
by Judge Stiles:

Q. You are the wife of Jas. Hatfield?

A. Of Jas. Hatfield; yes, sir.

Q. And what is your age?

A. Sixty-two.

page 300.] Q. Where were you born and where have you lived the greater part of your life?

A. Well, I was born on Guyan River, near the mouth of Gilbert creek.

Q. Where have you lived since that time?

A. Well, most of my time there, near the mouth of Gilbert.

Q. Did you know Isaac Sprat in his life time?

A. Yes, sir.

Q. Were you related to him and if so, how?

A. He was my grandfather.

Q. How far back do you remember the mouth of Gilbert creek?

A. Well, I don't know. I reckon about fifty years.

Q. Do you remember how that creek emptied or flowed into Guyan River in your childhood?

A. Yes, sir, I can recollect how it used to run.

Q. State whether or not it ran into the river the same as it does now, or whether it ran different?

A. Yes, sir, pretty much so.

Q. You may describe the situation of the creek at that time; what was there on either side of the creek, and in what respect it is now different, if at all, at the mouth?

A. Well, there *aint* much change in running into the river now and as far back as I recollect. There was some trees that stood on the bank of the creek, near my grandfather's draw bars, some little trees stood there, and some of them have washed out.

Q. What was there on the other side of the creek, on the left hand side going up?

A. From the river up?

page 300a.] Q. Yes, from the river up to the mouth of the creek?

A. It was just level. My grandfather had his garden on one side lane and at the upper side of the lane and next to the river, he had his spring lot.

Q. Do you remember anything about a house or building for drying fruit?

A. Yes, sir, it was up at the upper end of his garder

Q. Where did that stand? Describe it with reference to the crossing as it now is?

A. Well, it stood up there at the second crossing. We also called it the ford, just above his house.

Q. Do you mean the crossing of the creek?

A. The crossing of the creek; yes, sir. I reckon you might call it the second crossing from the mouth of the creek, and there was a washing place there

Q. What sort of a washing place do you refer to, and where was it?

A. Well, it was just above his dry house, under some elms on the bank of the creek.

Q. Do you remember where the ford, called the Horse Ford cross the river, about where the creek used to be?

A. Yes, sir, I can recollect very well where it used to be.

Q. Where did that ford strike the river with reference to the creek, as you came from the north side of the river?

A. Well, you could come out on either side of the creek, and come down to the ford, You come right out to the mouth of Gilbert creek, and come out on either side of the creek, where it empties in.

page 301.] Q. Did the ford strike above or below the mouth of the creek?

A. It was a little below where it run into the creek. A little below where the creek came in.

Q. How far from the mouth of the creek were you born?

A. Well, it was always called about a quarter of a mile, I believe.

Q. How often were you at your grandfather's place during your childhood?

A. Why I was there a heap. Half my time mostly, I expect.

CROSS EXAMINATION.

by Attorney John A. Sheppard:

Q. How far were the draw bars you speak of from the three (3) sugar tree stumps?

A. Well, I cannot tell you nothing about the stumps. I never knowed there was any there.

Q. How far were they from the sycamore and elm?

A. How far was which?

Q. The draw bars?

A. These trees I was talking about, they stood right on the bank of the creek.

Q. I am talking about the sycamore and elm. Answer my questions about the sycamore and elm?

(Counsel for defendant H. C. King, objected to the foregoing question, because the witness has not testified about a sycamore or elm.)

A. I never knowed nothing about the sycamore

page 302.] and elm.

Q. How far were the draw bars from the large sycamore?

A. I don't recollect anything about the sycamore.

Q. How far were the draw bars from the walnuts that stood on the upper edge of the creek?

A. On the opposite side from the draw bars?

Q. The walnuts that stood on the upper side of the creek, the upper creek bank?

A. Well, I don't know; they were on the other side from the bars.

Q. You remember the walnut trees that stood on the upper bank of Gilbert creek, do you?

A. No, sir.

Q. Was there any spring there at the upper creek bank?

A. No, sir, there was none at the creek bank.

Q. How far was that spring from the creek?

A. Well, I cannot just exactly tell you; it was a right smart piece from the creek.

Q. Then you do not remember the large sycamore that stood on the lower side of the creek?

A. No, sir, I don't recollect it.

Q. If such a tree stood there, you certainly would remember it, wouldn't you?

A. Well, I don't recollect it.

Q. I say if a large sycamore had stood on the lower bank of the creek, at its mouth at any time during your early life, when you were at your grandfather Sprat, you could certainly remember it now, couldn't you?

A. There were some elms standing on the bank of
page 303.] the creek right at the ford, where you come to go across the creek, right above the mouth of Gilbert, at my grandfather's. There were some two or three elms that stood right there. I can recollect them; right on the bank of the creek, just above the mouth of the creek, where it emptied into the river.

Q. And do you not also remember that right in the mouth of the creek and the edge of the river, there was a pool of water, just on the lower side and opposite of the large sycamore?

A. No, sir, I don't recollect it that way.

Q. Where was it?

A. It was on the upper side of the creek, where it emptied in. No, sir. these trees I am talking about, stood right on the bank of the creek, just above the river, where the creek emptied into the river.

Q. Where was the pool of water, below or above?

A. On the opper side of the creek.

Q. The pool of water was on the upper side of the creek?

A. Yes, sir, where it emptied in.

Q. Was the pool of water in the creek?

A. No, it was in the river.

Q. The little pool in the river just above the mouth of the creek where the creek emptied in, and very close to the elm tree?

A. No, sir, the elm tree was on the other side of the creek from the pool you are talking about.

Q. Was the elm tree on the lower or upper side of the mouth of Gilbert creek?

A. I reckon you call it on the lower side.

Q. Have you been there at that place recently?

page 304.]

A. Yes, sir.

Q. Did you see any of the stumps or roots of those elm trees?

A. No, sir.

Q. What has become of them?

A. I don't know. I don't they are there. I think they are washed all away.

Q. Did you notice that small sycamore standing on the river bank, at the upper corner next to the river of Dave Trent's garden?

A. No, I didn't notice it.

Q. Did the creek when you first remember it at its mouth make a bend and turn slightly up the river?

A. No, sir, it always run down.

Q. Do you mean to say that Gilbert creek emptied into the river now, just where it did when you can first remember it?

A. Yes, it runs near on the same direction. I believe it runs a little higher up than when I first recollect it.

Q. Mrs. Hatfield, do you not mean, it runs into the river lower down that when you first remember it?

A. No sir, it never did run.

Q. Then the change took place before you can remember, did it?

A. If there was any change in it. I don't think the change ever was.

RE-DIRECT EXAMINATION
by Judge Stiles.

page 305.] Q. How does the creek for same distance up the creek, compare in width with what it used to be; is it wider or narrower?

A. It is wider now than it used to be?

Q. Do you know what caused the widening?

A. Why it was floating timber out of it, I suppose. Hauling timber.

Q. Do you remember of a very high rocky bank, some distance up the creek where the creek makes a sharp turn at right angles, turning off like an elbow?

A. Yes, sir. That is just above my grandfather's, at the upper end of his garden, it runs down by the mountain side of that cliff, and then when it comes down to that little bottom, it sorter makes a little turn over to the ford.

Q. Below that large bend is there open ground, bottom land on each side of the creek?

A. No, sir, there wasn't any bottom land on the opposite side of the creek near my grandfather's. It was just a bank along until you come up to the little ford; that was open, a nice little field, after you come up on the bank.

Q. Was there or not any bend in the creek, after you got down near your grandfather's house, from there down to the river?

A. No, sir. No, not to say any.

Here the notes of the foregoing testimony was read to the witness and approved by her and by consent of the parties hereto, the

witness authorized the Commissioner to sign her name to the evidence when it is extended.

And further this deponeth sayith not.

FLORA ANN HATFIELD,

2 days and 89 miles. *Signed by Commissioner.*

page 306-7.] A. L. ROBINETT, a witness introduced by the defendant King after being first duly sworn upon oath testified as follows.

EXAMINED
by Judge Stiles.

Q. State your age, *r4sidence* and occupation?

A. *Ge* 54 years, I live now in Pike County on Peter Creek, Kentucky, and am a farmer.

Q. How long have you lived on Peter Creek?

A. Ever since last March a year ago.

Q. Where did you live before you went to Peter Creek?

A. On War Creek, McDowell County West Virginia.

Q. How long had you lived there or in that neighborhood?

A. As near as I could *extimate* it about twenty years.

Q. Where you born and raised?

A. I was born I reckon in Tazwell County, and have my father lived different places in my growing up. We lived in Webster County West Virginia, and a portion of my time in Kanawha County West Virginia.

Q. Did you ever live in the Tug River Country or on Knox or Peter Creek before you went to McDowell?

A. Yes sir. I lived on the Camp Creek of Knox I was married when we lived there. My father moved from Kanawha County to that place.

Q. What was your father's and grand father's names?

A. My fathers name was Addison Robinett and my grandfather's name was Nathan Robinett.

Q. When you were living on Camp Creek or elsewhere along the waters of Tug River were you *acquianted* with the old peo-

ple or with the settlers and residents generally in that neighborhood?

A. Well a portion I was.

Q. Did you used to hear them or any of them speak of the earlier settlement of the country and speak of the creeks along Tug River?

A. Yes sir I have them speak of some of the creeks.

Q. Do you know where Thacker Creek is in this county?

A. Yes sir.

page 308.] Q. Did you ever hear among the old settlers or the people whom you knew some years back any tradition that that creek had been called by some other before it was called Thacker Creek?

A. Well sir I will *tel* you what I heard. My old grandfather Nathan Robinett, said there was a man moved on Thacker Creek by the name of Thacker and he put a mill on it and he said it took its name from that man putting a mill on it and living on the creek.

Q. Did he say what the creek had been called before that and if so what?

A. Why he said that it had been called Turkey Creek before that.

Q. About how long ago did you hear your grand father say this?

A. As near as I can guess the time it has been thirty odd years ago.

Q. Is he living now, if not how long has he been dead?

A. No he is dead. He has been dead as near as I can recollect the time some eighteen or twenty years.

Q. How old was he at the time of his death, if you know?

A. What I heard the people say he was over a hundred years old when he died.

Q. Did you *har* that from members of your family or from other people?

A. From the connection of the family.

Q. Where had your grand father lived in this part of the country in the neighborhood of Tug River?

A. Well I have heard that he had lived at different places—on Peter Creek and Barrenshe and Camp Creek of Knox and other places in the neighborhood of this country but I cant make mention of them.

Q. Where did he die?

A. In Wyoming County, West Virginia.

Q. Do you know at whose house?

A. At Noah Burchfield's they said I *wasent* page 309.] there.

Q. Where did he live at the time you heard him speak of the change in the name of the creek now called Thacker?

A. He lived on Camp Creek of Knox at my father's house.

Q. Have you been acquainted with the people along Tug River at the *the* upper end of what is now Mingo County and the lower end of McDowell County, in years past.

A. Yes sir to some extent.

Q. State whether or not you ever learned among them how Turkey Creek that flows into Tug River, some six or eight miles below War Creek came to be called Turkey Creek?

A. Well sir I have heard it said that one of the Baileys killed a turkey on the creek and *rroasted* it and it was a very large one and from that the creek went by the name of Turkey.

Q. Do you remember what Bailey it was who was reputed to have killed the turkey?

A. To my knowledge Eli Bailey.

Q. Can you mention some of the people you heard tell about this?

A. I have heard some of the Baileys—Eli, I think and Harve Bailey his brother, and my step mother, I have heard her talk about it.

Q. Who was your step mother?

A. She was a Cline, Patsy Cline before she married my father.

Q. Do you know whose daughter she was and where she lived?

A. She was a daughter of old Mike Cline, she lived along up this river in the neighborhood about the mouth of Panther, she was raised in that neighborhood I think.

Q. Can you recall any one else at present whom you heard speak of the same thing?

A. Not at present that I recollect of.

Q. Did you ever know Noah Burchfield?

A. Yes sir.

Q. How long ago?

A. I cant state the time for sure but I knew him when I was quite small and young.

Q. Did you ever see him have a tomahawk or
page 310.] hatchet, if so when and where and what sort of a thing was it?

A. I saw him have what used to go by the name of a tomahawk, it was shaped like a little pole ax but it was quite small. That was as well as I can recollect about two years before the war He was out to, our house with it. He carried it in a belt and scabbard when he was hunting.

Q. About how long ago was it that you heard the people you have mentioned speak of the manner in which Turkey Creek got its name?

A. Some where about twenty-five years I *rekon*.

Contesting defendant move to strike out each and every answer of the witness.

CROSS EXAMINATION.

By Mr. Sheppard.

Q. You heard two persons say that Eli Bailey killed a turkey on Turkey Creek and that gave it the name, and you call that tradition do you?

Objected to by defendant King.

A. I *dont* know what you mean by tradition.

Q. Where were you when Eli Bailey or Have which ever one if was told you about killing the turkey?

A. I was at Harve Bailey's house.

Q. Now was it Harve told you that Eli killed it or Eli told you that Harve killed it?

A. Eli said he killed it.

Q. That is the only turkey you ever heard of being killed on any of the creeks is it?

A. No sir I have heard of more being killed and on different creeks?

Q. Was the killing of a turkey in Eli Bailey's time an uncommon thing?

A. No sir I suppose not.

Q. Do you know of a creek in this country that
page 311.] *hasent* had turkeys killed on it?

A. Well I know of creeks in this country that I *havent* heard of turkeys being killed on them.

Q. How many Turkey Creeks do you know?

A. I know of two what they call Turkey

Q. How far apart are they?

A. One runs into Knox creek up here and the other into the river. To guess at it I would say they are some seven or eight miles apart.

Q. Who was present when Eli told you this?

A. Harve Bailey was there, it was at his house and maybe some of his family I disremember now.

Q. What were you doing there?

A. I was on a visit.

Q. How old were you?

A. I reckon I was some twenty five or six or along there to my knowledge, I paid no attention to it at the time?

Q. Where did Harve Bailey live?

A. Up there near the mouth of Bull Creek on this river.

Q. How many years has it been since Eli killed the turkey?

A. I *couldent* state how many years, it was back in his young days the way they talked.

Q. Did you hear him say anything about an old turkey pen on that creek?

A. I *dont* know that I did.

Q. Do you know that you *didont*?

A. I *didont* know anything about it.

Q. Did you ever hear any body else talk about a turkey pen on that creek?

A. No sir not to my knowledge.

Q. Were you on Camp Creek of Knox when your grandfather told you about Thacker and the old mill?

page 312.] A. Yes sir.

Q. How far is that from Thacker Creek?

A. I suppose it is some twelve miles or thereabouts.

Q. Did you ever see that Thacker mill?

A. No sir not that I know of?

Q. Were you ever at Thacker Creek in your young days?

A. I have passed the mouth of it.

Q. And you saw no trace of the old mill there?

A. No sir.

And further this deponent saith not.

his
A. L. x ROBENETT.
mark.

2 *day* and 52 miles.

It is ordered that these proceedings be adjourned

page 313] until tomorrow, at same place.

Met this 10th. day of September 1902, pursuant to adjournment on yesterday.

Present the same attorneys as heretofore.

Q. JULINA JUSTUS, a witness introduced by the defendant King after being first duly sworn upon oath testified as follows.

EXAMINED
By Judge Stiles.

Q. Where do you live?

A. I live on the Race Fork of Knox Creek, of Buchanan County Virginia.

Q. You are the wife of Daniel Justus (Justice)

A. Yes sir.

Q. Do you know where there are some poplar stumps up on the side of the drain back of your house that have been claimed by Campbell, Sheppard and others to be marked corner trees?

A. Yes sir.

Q. Did you ever notice those trees before they were cut down

A. No sir I never.

Q. Did you see the trees at about the time they were cut and did you have anything to do with them if so state what you did and saw?

A. No sir I *dident* have anything to do with them at the time they was cut; I helped to work up one of them after they was cut.

Q. Which one was that?

A. The lower one.

Q. What did you and those you helped do with the log?

A. Sawed it off and sorter swung the *but* around and rolled it in the hollow.

Q. Is the log still lying in the hollow below the stump?

A. Yes sir.

Q. Do you know how corner trees are marked?

A. No sir not only as people says and people says that corner trees are marked with three hacks and line trees with

page 314.] two hacks.

Q. Did you at any time see any such hacks on the poplar tree or on the log or stump?

A. No sir I never was about them till they was cut down.

Q. Did you ever notice a rotten oak log lying a little below the poplar stump and near a small hollow in the ground where it looked as if a tree might have uprooted?

A. Yes a considerable distance from the stump there was a

tree I wont say that it was rooted up or broken off at the ground. This was to the left of the stump.

Q. Did it appear to be sound or a good deal rotted?

A. *I* was a good deal rotted, the out side of it was rotten and the middle of it was good and sound.

Q. Do you know what was done with that log?

A. Yes sir, they worked it up and rolled it and burnt it.

CROSS EXAMINATION.

By Mr. Sheppard.

Q. Who was present when the poplar trees were cut down?

A. Why I can give you the names of all that was at the house but I *wasent* there and dont know who all was present when the tree was cut down—I can tell you who all was there at work. That is when one was cut, when one was cut there was nobody present but Daniel and Jake Lester and me, I was sitting off to one side watching them cut it. There was John Harrison Lester, William Anderson Lester, Riley Lester, Wayne Justus, Daniel Justus, Sam Baker, was at the house but I believe he went off, these were the work hands that I remember of being at the house.

Q. Which one of the trees did Jake Lester and Daniel cut?

A. The upper one.

Q. Jake Lester is the same man as Miles Lester?

A. Yes sir they are the same.

Q. Which one of them is sometimes called Coon page 315.] Lester?

A. William Anderson Lester, my brother

Q. You heard Miles Lester speak of the poplar he helped cut being marked as a corner did you?

Objected to by defendant King.

A. Yes sir I heard him say it was a corner last fall.

Q. You had a working at your house for the purpose of clearing the ground around those poplars at the time the lower poplar was cut did you?

A. Yes sir, we had a clearing where the poplars was but I

dident know at the time they was there, I never heard them talk any about them.

Q. Do you know who cut the lower poplar?

A. I *wasent* there, I dont.

Q. Do you know who cut that beech line tree just below the poplars?

A. Yes sir.

Q. Who?

A. Me and Daniel Justus son.

Q. You saw the line marks on it when you cut it did you?

Objected to by the defendant King on the ground that this is not cross examination.

A. Yes sir.

Q. When Mr. Gaujot, Mr. Campbell and I were up there at your house in August 1901, you told us about the beech line tree and that you helped cut it and also told who as best you could remember, who were at your house on that day of the clearing, did you?

A. Yes sir.

Q. You also told us that the upper poplar was cut by Miles Lester and your husband the day after that clearing, did you?

A. Well I dont recollect telling exactly when it was cut. I know it was cut after the clearing.

Q. When you say that the oak log was lying to the left of the poplar stump do you mean that it was to the left of the stumps as you go up the branch

page 316.] A. I mean that it is to the left of them on the mountain like sorter below them. It is right sorter to the left of them up the little hollow on the hill like more below them.

Q. Is it to the left going up the hollow or the left coming down the hollow?

A. To the left going up the hollow.

Q. You say that it is a considerable distance from the poplar stumps to where the oak log was lying? Can you give us some estimate of the distance?

A. From where the but of it lay it must be some thirty or forty feet to the stumps.

Q. And as I understand you it is down the hollow below the stumps and up on the hill side some what above them, I mean that while it was further down the hollow than the poplar stumps, it *layax* a little further up on the left hill side, than the poplar stumps stood, is this understanding correct?

A. No sir it dont lay further up on the hill than the poplar stumps stood, it is below them.

Q. By my question I did not mean that the log lay further up the branch than the stumps, but what I want to know is was the *the* oak log down the branch from the poplar stumps?

A. It was right on the lower side of the hollow below the poplar stumps, it is a little gut and the stumps stand on the upper side of that and the log lays down in the hollow like below them.

Q. Was the log lying there when you first saw it?

A. Yes sir.

Q. Was the oak log when you first saw it nearer the bottom of the hollow than either one of the poplar stumps?

A. Yes sir it was nearer than any one of them was.

Q. The lower poplar stump stands on the bank of
page 317.] the branch of that hollaw and on the upper side of the branch, on which bank did the oak log lie in

A. It laid on the left hand side as you went up.

Q. How close to the branch?

A. The tip of it laid in the branch, the but of the log lay out on the left of the poplar stumps below them.

Q. Was the but of that log straight out from the branch?

A. No sir, it was straight out nearly from the poplar stumps right below them, in what you would say the little drain that runs out.

Q. Had the oak tree fallen lengthwise down the drain or had it fallen down the hill side to the drain?

A. It fell down the hill side to the drain.

Q. Had it fallen about square down the hill side?

A. No sir as well as I can recollect it was a little grain slanting towards the mouth of the little drain.

Q. And you think the but of the oak was as much as forty feet or more from the lower poplar stump, do you?

Objected to by the defendant King.

A. No sir it *wasent* that far I dont think.

Q. How far was it?

A. Well I never seen it measured but I will say thirty feet, as I said a while ago, thirty or forty.

Q. Point out some object here that will give us your idea of that distance?

A. Well I think that it might be as far as out to that *pailing* (indicating) it might be as far and it might not be as for I *aint* certain.

Q. There is a little hole in the ground about fifteen feet from the lower poplar stump do you remember seeing it?

A. No sir I dont.

Q. The hole I speak of is a swag or depression that looks like a *treex* might have rooted up there and is about fif-

page 318.] teen feet from the lower poplar stump on a line running diagonally from the branch, do you now remember of seeing that place?

A. Yes sir there is a little bit of a swag there but no appearance of no tree, there could have been a tree there in time.

Q. Is that the place where you saw the but of the oak log lying?

A. No sir.

Q. Do you remember seeing the place where the people from Wayne County dug for sugar tree roots?

Objected by defendant King.

A. I remember seeing where they dug for them.

Q. Do you know where the remains of the lynn stump *use*?

A. Yes sir it is in the ground. I know the *pplace*.

Q. How far from that lynn stump is the place where the Wayne County people dug?

A. They dug two places. They dug one right in the roots

of it and they dug one about twenty eight or forty eight feet from it, I saw them measure it but I dont remember which it was.

Q. You showed the place where they dug to Claud Gaujot and Sam McInturff did you?

A. Yes sir.

RE-EXAMINATION.

Q. About how far was the *but* of the oak log from the place where the Wayne County people dug, I dont mean at the lynn stump but at the other place?

A. It must be some fifteen or twenty feet.

Q. How long according to your recollection was it that the upper poplar was cut after the cutting of the lower one?

A. I dont recollect exactly how long, it *wasent* long though.

RE-CROSS EXAMINATION.

Q. Do you remember the time that Sam McIn-
page 319.] turff and his wife and Claud Gaujot at your house when you went with them to the lynn stump?

A. Yes sir.

Q. Was that before or after the other people dug at the lynn stump?

A. It was before I believe.

Q. Was that the time you showed them where the Wayne County people had dug?

A. Yes sir.

Q. Did McInturff and Gaujot do some digging on the lower side of the lynn stump?

A. If they dug any I dont recollect it.

And further this deponent saith not.

her
JULINA X JUSTICE.
mark

3 days and 80 miles.

At the request of the contesting defendants the commissioner ascertained the distance between the objects pointed out by Julina

Justice as the distance between the lower poplar stump and the oak log, that is where she was seated and the *pailings* indicated, as about fifty five feet, the same having been stepped page 320.] by the commissioner.

ELVIRA JUSTUS, a witness introduced by the defendant King after being first duly sworn upon oath testified as follows:

EXAMINED
By Judge Stiles.

Q. Where do you live and with whom?

A. I live on Guesses Fork of Knox Creek in Buchanan County, and live with John Justice—my husband.

Q. How old are *yoy?*

A. I am *growing* on sixteen years.

Q. Do you know where Daniel Justice lives?

A. Yes sir.

Q. Do you remember or know anything about some poplar trees and other trees that were cut down by Daniel Justus and other persons up, in the hollow back of his house, did you ever see the trees?

A. Yes sir.

Q. Do you remember particularly the two large poplars?

Objected to by contesting defendants.

A. Yes sir.

Q. Can you describe where they stood, about how far from the bottom of the hollow and on which side as you go up and about how far apart they were?

A. Yes sir. The first lower one was *standin* from about ten to fifteen feet from the bottom of the hollow, the upper one was about twenty five feet I expect. They were on the left hand side as you go up.

Q. Have you been to the stumps of these trees since they were cut down with any of Dan Justices family or any one else?

A. Yes sir.

Q. Are the stumps you refer to the ones that there has been a good deal of talk about lately as being corner trees?

Objected to by contesting defendants. .

page 321.] A. Yes sir.

Q. Tell what you know about those trees or about the logs after the trees were cut?

A. Well sir I have been by the trees and around them before they were cut and since too and I never saw no marks on them or anything else.

Q. How soon did you see them after they were cut?

A. Well sir I saw them after they was cut every day, *might* nigh it except Sunday, I worked around them all the time.

Q. Do you know what became of the tree that was cut from the lower poplar stump?

A. Yes me and my Mama sawed it in two some three or four times and they rolled it out and part of it except the *but* of it was burnt up, the *but* is lying there in the hollow now.

Q. Who is your mama?

A. Sarah Lester.

Q. Have you seen the *but* of the poplar log lying in the drain below the poplar stump, have you seen it lately?

A. Yes sir I have seen it every time I go up and down the hollow I can see it lying there.

Q. Is that the one that you rolled from one of the poplar stumps?

A. Yes sir, from the lower poplar stump.

Q. Do you know how corner trees are said to be hacked?

Objected to by contesting defendants.

A. I reckon they are hacked three hacks.

Q. Do you know anything about a lynn stump standing pretty nearly between the two poplar stumps?

Objected to by the contesting defendants, as leading.

page 322.] A. Yes sir.

Q. Describe the stump?

A. An old hollow lynn stump, it is a one sided stump, thats a one sided stump *and* old hollow lynn stump.

Q. Did you ever see the tree when it was standing?

A. Yes sir.

Q. Did you ever see any sugar tree standing there or within a few *feew* of where that stump now is?

A. No sir.

Q. How long ago did you first see that hollow or become acquainted with it where those poplar trees stood, about how old were you at the time?

A. I was about eleven years old.

Contesting defendants move to strike out the testimony of the witness.

CROSS-EXAMINATION.

By Mr. Sheppard.

Q. You are not sixteen years old are you?

A. No sir.

Q. When were you married?

A. I was married pretty well two years ago.

Q. Is Daniel Justus your father?

A. Yes sir.

Q. What kin are you to Julina Justus?

A. She is my step mother.

Q. Was your mother—Sarah Lester, ever married to *to* your father Daniel Justus?

Objected to by defendant King.

A. Yes sir.

Q. Which one is at present your father's wife, your mother, or Julina?

A. Julina.

page 323.] Q. Where do your mother and step mother live?

Objected to by defendant King.

A. In Buchanan County.

Q. At whose house?

A. At my fathers.

Q. Your step mother is your mother's *neice* is she not?

A. Yes sir.

Q. When were you last at your fathers house?

A. Last Sunday morning.

Q. Who come after you to go?

A. I come down see them and my Pa told me that they wanted me for a witness and I come.

Q. Where were you when your Pa told you that.

A. I was in my Pa's house.

Q. Did he take you up to the stumps of the poplars?

A. No sir.

Q. Did he tell you what they wanted you as a witness about?

A. Yes sir he said that they wanted me as a witness for them old poplar stumps.

Q. And he told you about that log in the hollow being the same one that come off of the lower poplar stump, did he?

A. No sir I knowed it myself.

Q. Who told you to come over there to his house?

A. Nobody I just come to see them.

Q. Dont you know that you went to look at those stumps and the log in the hollow, when your father told you that they wanted you as a witness down here?

A. No sir I knowed where the log layed and the stump too and I *dident* have to go and look at them.

Q. When did you see them last?

A. About a month ago. I was a picking *beens* and seed them.

Q. *Ho* near were you to, them?

page 324.] A. I was around the stumps—was all around them and went across the log in getting over the hollow.

Q. Can you tell me why you went across that hollow where the log is?

A. Yes I went over to get to the gate.

Q. What gate?

A. Betwixt the pasture and the corn.

Q. There is a very plain way leading from the stumps right

down the branch through a large gate out of the corn field into the yard at your fathers, *insent* there?

A. Yes sir.

Q. That is the way people go from the yard into the corn field and up where the stumps are, is it not?

A. Yes sir that gate was put in the upper end of the yard near the little horse lot and I went across there to get to the gate.

Q. Well in crossing the hollow you climbed a high fence *dident* you?

A. No sir.

Q. Did you get into the pasture?

A. Yes sir.

Q. How did you get out of the cornfield into the pasture? if you did not cross the fence?

A. Sir I *open* the gate.

Q. You crossed this log and went right on through a gate in going from the poplar stumps into the pasture, did you?

A. Yes sir.

Q. There is a pass way leading across the hollow through that gate at that place, is there?

A. Well sir there aint no pass way but I just went across that way.

Q. You are certain are you that you went through a gate at that place?

A. Yes sir I told you once or twice I did.

page 325.] Q. Why did you not go out the gate down at the lower side of the corn field?

A. Well sir I just wanted to go through that gate up there

Q. Will you pleas tell me when that gate up there, where you crossed the hollow and the log was put in?

A. Last spring.

Q. Is it a gate in the fence that runs up that branch at your fathers house between the corn field and the little pasture field?

A. Yes sir.

Q. And as I understand you you were picking beans around the poplar stumps and when you got through you walked right

down across the poplar log that came off of the lower stump and passed right on through the gate in that fence, is that right?

A. Yes sir.

Q. Now dont you know that there are no beans near those poplar stumps?

A. They are sir.

Q. Dont you also know that the gate in the fence that runs between the pasture field and corn *field and corn field* is from thirty to fifty yards up that hollow above the poplar log you have been talking about?

A. No sir, from the upper end of the pasture it is about from fifteen to twenty feet up to the lower poplar stump.

Q. Is the upper end of the pasture where the gate is that you went through?

A. Yes sir.

Q. And is the poplar stumps you have been testifying about fifteen or twenty feet up the hollow from the gate at the upper end of the pasture?

A. No sir they aint up the hollow they are up on the side of the bank—hill like.

page 326.] Q. On which side of the hollow as you go up are those poplar stumps?

A. I told you they was on the left hand side.

Q. Are they just about square out to the left of that gate at the upper end of the pasture?

A. Yes sir.

Q. And standing about thirty feet, you think upon the hill side?, from the gate?

A. Yes sir the upper one is.

Q. Is the lower one closer than that to the gate?

A. Yes sir.

Q. About how many feet is the lower one from the gate?, at the upper end of the pasture?

A. I told you it was about fifteen feet.

Q. Is the poplar log you walked over and that you say came

from the lower stump lying between that gate and the lower poplar stump?

A. Yes sir.

Q. Now dont you know that you are mistaken about this and that you did not see those poplar stumps and walk over the poplar log at that place?

A. No sir I aint mistaken.

Q. Are the stumps you have described to me as standing about fifteen and thirty feet from the gate at the upper end of the pasture the stumps of the trees that you say *you say* while they were standing and that you did not see any marks on?

A. Yes sir.

Q. When were those trees cut?

A. About six years next Christmas, that is one of them was and I wont say when the other was cut,

RE-EXAMINATION.

page 327.] Q. Have you been at the stumps—the poplar stumps that you have been talking about when any one else was looking at them or examining them, within a year past?

A. No sir.

Q. Have you ever seen any measurements made from the stumps to the drain or the gate or from one stump to another?

A. No sir I *havent.*

Q. How far is the nearest poplar stump from the old hollow lynn stump?, How far is the poplar that is nearest to it?

A. Well sir the lynn stump is about middle ways betwixt those poplar stumps. It is about fifteen feet from the lynn stump to the poplar stump.

And further this deponent saith not.

her
ELVIRA X JUSTUS.
mark

3 days and 80 miles.

page 328.] Q. FRED JUSTUS, a witness introduced by the

defendant King after being first *doly* sworn upon oath testified as follows:

EXAMINED

By Judge Stiles.

A. State your age and residence?

A. Age 18 years and I live on the Race Fork of Knox Creek, Virginia.

Q. *Whos* son are you?

A. Daniel Justus (Justice)

Q. Have you ever seen two large poplar stumps up the hollow back of your house, that Sheppard and Campbell and others have made measurements to and surveys around and claim are the stumps of marked trees?

A. I have seed the trees and the stumps but there was no marks on them that ever I knowed of.

Q. Do you know where the stumps stand?

A. Yes sir.

Q. You may describe their situation with reference to the bottom of the hollow and with reference to each other, their distance from the drain and each other?

A. I guess it is about fifteen or twenty steps down to the hollow from the lower one, I never seen it measured but I guess the distance. The lower one is about half the distance betwixt the hollow and the upper one.

Q. How near to these trees did you ever go before they were cut down?

A. I was all around them, and the upper one I was shooting at and examined it closely and I never seed no hacks at all.

Q. From what point were you shooting?

A. From where the cribs was sitting or close there, I guess it was seventy-five or a hundred yards.

page 329.] Q. Where did the cribs stand with reference to where the house now is?

A. It stands right across the little hollow rather bearing up I guess it is about sixty yards from the house.

Q. What sort of a mark, if any were you shooting at and

where was it?

A. It was at a tin cup bottom on the lower side of the upper tree.

Q. Do you know about how high up the mark was put from the ground?

A. It was about four foot and a half or five foot I guess.

Q. Did any of the *bulletts* hit the tree?

A. Some of them hit it and some missed it and some scamped it. and some hit the mark.

Q. Was there any one but yourself shooting?

A. Yes sir there was another fellow with me.

Q. Did you ever see corner trees and do you know how they are marked?

A. Yes sir.

Q. Have you seen many or few?

A. I aint seen no great lot of them. I have just seed enough of them to know them.

Q. Did you have anything to do with cutting any timber around these trees or have anything to do with these trees after they were cut?

A. Yes sir I have cut timber all around them.

Q. Do you know where there is an old lynn stump near the poplar stumps that you have spoken of?

A. Yes sir, there is an old lynn stump there.

Q. Describe it and state where it stands with reference to the poplar stump?

A It is right about betwixt them or a little closer to the lower one than it is to the upper one.

page 330.] Q. What is the condition of it at present is it sound or otherwise, describe it?

A. No sir, it is rotted down close to the ground, it is all rotted close to the ground but the old roots.

Q. Did ever see Lynn the while standing?

A. Yes sir, me and my father cut it down.

Q. What was the nearest tree at that time?

A. There was a beech standing right below it.

A. About 25 years of age, I live on Guesses Fork of Knox Creek and am a farmer when I am home?

Q. Do you know where Dan Justice lives on the Race Fork?

A. On the Race Fork, yes sir.

Q. Have you ever been at his house or up through the hollow back of the house where he lives?

A. Yes sir I have been at his house and up the hollow.

Q. Do you know where there are two large poplar stumps in that hollow that some of the people have said were the stumps of marked trees?, or that Campbell and Sheppard claim were such marked trees?

A. Yes sir I have seed them stumps there.

Q. Did you ever see the trees when they were standing?

A. Yes sir I seed one of them. How come me to see this tree I was going through there to my brothers and I found where somebody had been a shooting at it.

Q. What did you do?

A. When I saw where *there* had been a shooting I tried my pistol to see if I could beat them.

Q. What if anything did you shoot at more than the tree itself?

Objected to by contesting defendants.

A. I shot at the bottom of the tin cup that had been nailed upon it.

Q. How far away from the tree were you?

A. Well sir it was from seventy-five to eighty yards.

Q. Did you go to the tree to see whether you had hit it or not?

A. Yes sir.

Q. What sort of examination of the tree did you make?

A. Well sir I examined it around pretty well.

page 334.] Q. Which of the two poplars trees was it that you shot at?

A. It was the one that stood up on the left *handed* from the other two up on the hill.

Q. From what other two?

A. Why it was two more that stood down there a little below it a little more to the right of it.

Q. Have you been about the stump of that tree since the tree was cut down?

A. Yes sir I have hoed corn around the stump since it was cut down.

Q. And how long ago was it that you shot at the tree?

A. It has been about six years ago.

Q. Do you know how corner trees are marked?

A. Why sir they mark them with three hacks on a side.

Q. Did you ever help do any surveying?

A. Yes sir.

Q. Did you see any corner marks on the tree you shot at or any other trees around there?

A. No not that I—, there was none on it then.

Q. Did you see any bullet holes in the tree made before you shot at it?

Objected to by contesting defendants.

A. Yes sir there was bullet holes in it.

Q. Which side of the tree was the piece of tin stuck up on?

A. It was on the lower side next to the stables down there.

Q. Did you have anything to do with clearing away or cutting down the poplar trees?

A. No sir I did not.

Q. What is your wife's name?

A. Elvira Justus.

Q. Have you ever noticed a log lying in the drain below these poplar stumps—a poplar log?

page 335.] Q. Yes sir there was a log lying there.

Q. Do you know which or what stump that came from of your own knowledge?

A. No sir I dont exactly know just what stump it come *of* of, there are several stumps there.

CROSS-EXAMINATION
By Mr. Sheppard.

Q. Before commencing the cross-examination of the witness the contesting defendants move to strike out all of his testimony.

Q. Where were you going when you took a shot at the tree?

A. I was going to my brothers.

Q. Who was he and where did he live?

A. Bob Justus and he lives on Home Creek.

Q. After you shot at the tree did you go on to your brother's?

A. Yes sir I went on to his house.

Q. You was going up that branch were you along the road that leads over to Home Creek?

A. Yes sir.

Q. You passed on up by the tree and across the hill did you?

A. Yes sir.

Q. And you merely took a shot at the tree in passing by?

A. Yes sir I shot at it.

Q. How near did you pass to that tree in going to Home Creek?

A. I went to it and looked at where I had shot?

Q. How many times did you shoot at it before you got to the tree?

A. I shot some several shoots. I disremember just how many—several.

Q. Was anybody with you?

A. No sir I was by myself.

Q. You shot at the tree before you got to it?

A. Yes sir.

page 336.] Q. And when you went up to the tree you looked to see where your bullet hit?

A. Yes sir.

Q. Where did you shoot from?

A. I shot down about where the stables stand now though they *wasent* there then. There *werent* no clearing done there then.

Q. Did you go out of the path or take a rest to shoot from?

A. I shot from the side of a bush down there where the stable stands now.

Q. Then what did you do?

A. I went on across the hill.

Q. Did you go to the tree before you crossed the hill?

A. Yes sir I went to the tree and examined it.

Q. You examined all sides of that tree did you carefully?

A. I looked around it yes, so far as I shot to see where I had hit.

Q. You went around on the other side of the tree from where you shot and looked at that side?

A. Yes sir I went about all around the tree.

Q. Now what was you looking at the other side of that tree for?

A. Oh I was looking around it for bullets that had scamped it around.

Q. Did you think your ball had gone through the tree?

A. No sir I was just a looking, some balls had scamped it.

Q. On which sides were the scamps?

A. The scamps were somewheres on the right hand side of it like where I shot.

Q. Now is it not a fact you made a close examination of that tree to see if it was marked as a corner tree *dident* you?

A. I looked around that tree and if it had been marked I would have seed it.

Q. But it was corner marks you were looking for page 337.] *wasent* it?

Q. No sir I *dident* know nothing about corner marks. I *wasent loking* for corner marks but was looking to, see where I had shot.

Q. The question of a corner mark never entered your mind

at that time then?, but you was simply looking for the bullet hole is that right?

A. Yes sir.

Q. Who was with you?

A. I was by myself.

Q. Where is the stable that stands where you shot from with reference to Dan Justus house?

A. The stable stands up the hollow a little above the house up the hollow.

Q. On which side of the branch is that stable?

A. It stands on the left hand side of the branch as you go up that hollow a little above the house.

Q. Was there a path leading along up the branch where that stable is now or above it?

Objected to by defendant King.

A. Why there was a track went up that branch at that time, just a small little road.

Q. Were you in that track when you shot?

A. I disremember, I *wasent* far away though from it.

Q. Was that the track you were following when you went to the tree.

A. I was a going that track, yes sir, when I saw the cup nailed on the tree.

Q. Was the tin cup in plain view of you in the track?

A. Yes sir, if it *hadent* of been I *wouldent* a shot at it.

Q. And the cup was nailed up on the side of the tree and facing straight down in the direction where the stable is now?

A. Yes sir.

Q. Did you hit the cup?

Objected to by defendant, King.

A. No I disremember whether I hit it or not.

Q. Did you hit the tree?

page 338.] A. I scamped the tree.

Q. How many times did you shoot?

A. I shot some several times, I disremember how many times, I told you that a while ago.

Q. And you can't remember whether you hit the thing you shot at or not?

A. No sir.

Defendant Kings objects to the reiteration of immaterial questions.

Q. But you are now willing to swear that if there had been any corner marks on the tree you would have seen them, are you?

A. Yes sir if there had been any on there I would have seen them I would think.

Q. And you would now remember the corner marks whether you remember about hitting or missing the tin cup or not, would you?

A. If there had been any corner marks on there I would have seen them. I remember of scamping the tree.

Q. That is not the question do you now swear that you would have seen the corner marks and that you would now remember them, notwithstanding the fact that you can't remember whether you did the thing or not that you were trying to do?

Objected to by defendant King.

A. No there *wasent* no corner marks on it.

Q. You remember that now do you, positively?

A. Yes sir that there was not marks on it.

A. Had you been sent there to look for corner marks?

A. No sir I *didont* know anything about the corner marks at that time but if they had been on the tree I would have *seed* them in *look* looking around for the shots.

Q. Now please tell me why your memory is so good about

there being no corner marks and so bad about the accuracy of the shots you fired.

Have you not any reason for this?

page 339.] A. It looks like if there had been a corner tree it would have been hacked pretty big around it that a feller would have seen it.

Q. Who has been talking to you *aboout* what you were going to swear in this case?

A. No body sir.

Q. How many people have you told about making an examination of that poplar tree?

A. I never told nobody.

Q. How do you come to be here as a witness if you *dident* tell any body what you know?

A. Well sir I was brought here I don't know anything about.

Q. What brought you?

A. Why there was several of us come down a whole lot of the boys we all come together?

Q. You know who brought you out here and why don't you tell us in answer to that *qyestion?*

A. We all come down here together a whole lot of us.

Q. Well did you just pick up and come yourself without being told to come?

A. Why Dan Justus and a lot of us come, he got us to come, us boys.

Q. You are Dan's son-in-law are you?

A. Yes sir.

Q. How many people besides you did Dan bring out?

A. Well sir I *couldent* tell you exactly there was several of them.

Q. You came out with them did you?

A. Yes sir.

Q. Now give us their names?

Objected to by defendant King.

A. There were some sixteen of them as near as I can recollect.

Q. Did Dan *Tell* you what he wanted you out here for?

A. No sir.

page 340.] Q. Has Dan or any body told you what they wanted to prove by you?

A. No sir.

Q. And you never told any body what you would swear?

A. No sir.

By Mr. Kelly.

Q. How old were you when you done the shooting at this tree?

A. I disremember how old I was at that time.

Q. Did you shoot at any other tree around there at the same time?

A. Not around there at that time.

Q. Is that the only tree that you examined at that point?

A. Yes sir.

Q. When and to whom did you first tell about shooting at that tree and examining it?

A. I never told anybody that.

Q. Have you never told any body about it since you shot at it until to day?

A. No sir I disremember whether I ever did or not.

Q. Give me your age, as well as you recollect at the time you shot at that tree?

A. Oh I was eighteen or nineteen or older.

Q. Did you ever attend school?

A. No sir I never was at school to amount to anything.

Q. Did you ever go to school at all?

A. O I went a day or two.

Q. How old were you when you went a day or two?

A. I disremember how old I was.

Q. Don't you recollect how long it has been?

A. No sir I don't recollect it.

Q. Who was your teacher for that day or two?

A. A man by the name of John Belcher.

Q. How many scholars was there *there* that day or two?

A. I don't know exactly how many there was.

page 341.] Q. Were you grown when you went to school?

A. Hardly I don't guess.

Q. Can you read and write?

A. No sir.

And further this deponent saith not.

his
JOHN x JUSTUS.
mark.

3 days and 30 miles.

ANDY JUSTUS, a witness introduced by the defendant King after being first duly sworn upon oath testified as *follow*.

EXAMINED
By Judge Stiles.

Q. What is your age?

A. As nigh as I can get at it it is about twenty years.

Q. Where do you live?

A. I live on Laurel Creek of Knox Creek.

Q. Do you know Daniel Justice and do you know where he lives.

A. Yes sir.

Q. What relation to him are you?

A. We pass to be brothers.

Q. How long have you been acquainted with the place where he now lives?

A. About six years.

Q. Do you know where there are two poplar stumps up the

hollow back of his house that some people lately claim were the stumps of marked corner trees?

A. Yes sir.

Q. Describe their situation with reference to the hollow, how far up the hollow they are and how far from the bottom of the hollow and on which side?

page 342.] A. They are about as near as I can get it it is about 150 yards from the mouth of the hollow up to the stumps and the lower stump is about fifty feet from the hollow, and about fifty feet from the lower one to the upper one.

Q. How many times have you seen the stumps since the trees were cut?

A. I don't know how many times I have been acquainted with them ever since they were cut down.

Q. Did you ever see the trees before they were cut?

A. Yes sir.

Q. Do you know how corner trees are marked?

A. Yes sir.

Q. Did you ever do or help do any surveying?

A. Yes sir.

Q. Were either of the poplar trees you mentioned marked like corner trees?

A. No sir not as ever I seen.

Q. Were you present when they were cut down and did you have anything to do with cutting them or disposing of the logs after they were cut, if so tell what you did?

A. I was present when one was cut-the upper tree I was present when it was cut. I helped roll the lower tree or the log of it down into the hollow.

Q. Is the log that came from the lower poplar stump anywhere there about, at the present time?

A. Yes sir it is.

Q. Describe about where it is with reference to the stump, what distance and direction etc.

A. It is right down below the stump into the hollow.

Q. Do you remember anything about a little hole or hollow in the ground a short distance below the poplar stump—the lower poplar stump?

A. No sir I don't.

Q. Do you remember anything about an old oak log

page 343.] that was lying below the lower poplar at or before the poplar was cut down?

A. No sir I do not.

Q. Do you remember or do you know where there is an old lynn stump in the neighborhood of the poplar stump?

A. No sir.

Q. Did you ever do any shooting at either of these poplar trees if so tell us about it?

A. Yes sir. I shot at the upper poplar stump.

Q. When and who was with you and what did you shoot at?

A. About six years ago at a bottom of a tin cup and Fred Justice was with me.

Q. Was that before or after the tree was cut?

A. It was before.

Q. From what place or about what place did you shoot?

A. We shot about six feet up on the poplar tree and we was shooting about eighty yards below the poplar.

Q. On what side of the tree was the bottom of the tin cup nailed up.

A. On the lower side.

Q. And while shooting there did you go to the tree to see where the bullets struck?

A. Yes sir.

Q. Did any of them hit it?

A. Yes sir.

CROSS EXAMINATION.

By Mr. Sheppard.

Q. Where did you shoot from?

A. We shot below the stump, from the crib.

Q. *Wasent* there so many brush between the place where the crib is and that poplar that you could not see it?

A. No sir.

page 344.] Q. Did you shoot from the corner of the crib?

A. Yes sir.

Q. Was that ground cleared then?

A. Yes sir a little patch was.

Q. And crib built?

A. Yes sir there was a little cabin built, I call it a crib.

Q. You are one of the witness that came down here with your brother Daniel Justice are you?

A. No sir.

Q. Who served the *sublocna* on you?

A. A fellow by the name of Jim Justus.

Q. Do you remember when John Justus shot at that tree?

A. No sir I do not.

Q. You have heard him tell about shooting at it have you not?

A. No sir.

Q. *Havent* you and him been talking together about shooting at that poplar tree?

A. No sir.

Q. *Havent* you been telling other people about shooting at it?

A. No sir except Mr. Stiles here and the Colonel Wilder.

Q. You were present here a few minutes ago just after John Justus went off the witness stand and heard *Colnole* Wilder say how foolish it was for a witness to deny telling what he would swear, were you?

A. I was *hear* present but I don't remember him *say* that.

RE EXAMINATION.

Q. How far do you live from where John Justus lives?

A. About eight miles.

And further this deponent saith not.

ANDY JUSTUS.

3 days and 100 miles.

page 345.] ADAM JUSTUS, a witness for the defendant King after being first duly sworn upon oath testified as follows.

EXAMINED

By Judge Stiles.

Q. State your age, residence and occupation?

A. Age I will be 26 years old the 25th. day of next December I live in McDowell County, West Virginia, my business is about a corner up on Knox Creek, I work, I am a farmer.

Q. Do you know where Dan Justus lives on the Race Fork of Knox Creek?

A. Yes sir.

Q. Had you ever been there at his place, before the timber was cut out of the hollow where he lives?

A. Yes sir.

Q. What was the occasion of your going there and when did you go and what did you do, what were you there for and when was it?

A. I was there, its been I reckon it has been some four or five years this fall I don't remember just how long ago it was, I *dident* pay much attention to the time. I went over there to lay out to *sang*.

Q. And for any other purpose?

Objected to by contesting defendants.

A. No sir that was all of my business was to *sang*.

Q. Do you know where there are some poplar stumps up the drain back of Justus' house that have been claimed to be stumps of corner trees?

A. No sir I don't know of any stumps.

Q. Did you ever have occasion to look over any of the timber in that neighborhood, if so for what reason?

A. Well sir I was as I told you I went over there to *sang* and while I was over there Mr. Justus gets me and another gentleman that was with me to build him a chunk of a little

house, and when we started out to find timber to build the house Daniel made mention that if we found any corner trees or line trees to let him know it and not to cut
page 346.] them. Well we hunted about there and tried to hunt us a stick that would split. We hunted about there right sharply all over the hill and we *couldent* find anything that would split, and we *dident* take the job of building the house.

Q. What *king* of timber were you looking for to build a house of?

A. We was looking at most any *knid* that we could get to split.

A. How much of the hill side did you look over in looking for timber?

A. Why I was looking about right sharply over the hill. we was up 150 yards in the hill I guess and maybe further than that.

Q. Did you look at any poplar trees at that time?

A. Yes sir I suppose we did, we looked at a little of every kind of timber.

Q. Did you notice any poplars or poplar that was peculiar in any way?

A. No sir I don't know that I did.

Q. Did you find any marked timber of any kind up that hollow?

A. No sir I did not.

Q. Do you know how corner trees and line trees are marked?

A. Yes sir I suppose I do.

Q. Did you ever see any marked line trees or corner trees and help do any surveying?

A. Yes sir I have seen marked trees—line trees and corner trees. Yes sir I have helped do surveying.

CROSS EXAMINATION.

By Mr. Sheppard.

Q. Where is your farm located?

A. Well sir the one I am living on now is in McDowell County.

Q. Then you don't own any farm do you?

A. Yes sir I have got a couple or three places.

Q. You are at present a renter are you?

A. No sir.

Q. Where does Andy Justus own land.

page 347.] A. Why in Buchanan County—which Andy do you mean?

A. By counsel. Why this boy that was on the stand.

A. Oh I was mistaken, I thought you meant my father-in-law, Andy Justus. If this boy has any land I don't know it. If he has it is new thing to me.

Q. Where is the farm of John Justus, the boy *yhat* is with you here as a witness?

Objected to by defendant King.

A. There is a couple of John Justices here which one do you mean?

A. Dans son-in-law.

A. If he has any I don't know it.

Q. On what creek do you live?

A. Panther Creek.

Q. How far *far* from Dan Justices?

A. Why I guess it is about twenty miles, it might not be so far and maybe further.

Q. Who come after you as a witness?

A. Morgan Justus.

Q. He is a brother of Daniel Justus is he?

A. Yes sir, supposed to be.

Q. What did he tell you he wanted with you?

A. He said he wanted me to come down here for a witness?

Q. Who did he say sent him after you or told him to get you?

A. Why Daniel Justus as well as I remember.

And further this deponent saith not.

ADAM JUSTUS.

3 days and 106 miles.

page 348.] JOHN J. JUSTUS, a witness for the defendant King after being first duly sworn upon oath testified as follows.

EXAMINED

By Judge Stiles.

Q. State your age, residence and occupation?

A. Age about 33 years I reckon, I live *of* the Guesses Fork of Knox Creek, I farm for a living, mostly.

Q. Do you know Daniel Justus who lives on the Race Fork of Knox Creek and do you know the place where he lives?

A. Yes sir I know him. I know the place very well.

Q. Have you been there within the past year?

A. It *aint* been a year since I was there.

Q. Did you when there see a couple of poplar stumps that are claimed by some of the parties to this suit to be the stumps of marked trees?

A. Yes sir.

Q. Was any one with you and if so who?

A. Daniel Justus boy I believe was with me.

Q. Did you ever see those trees when they were standing?

A. Yes sir.

Q. What were you doing there at that the time and how did you come to go there?

A. Me and Morgan Justus went there to take a little job of clearing for Daniel Justus and he showed us over where there was said to be a birch and *and* white oak and maybe a hickory if I am not mistaken and we went up to look at the little job of work and I seen a beech, I think that had a little chunk of a hack or so on it and a cucumber. And he told us if I *aint*

mistaken he went back to the house about something, and told us where he wanted us to clear. And we went on and looked at the little job of work and he told us to notice about if we *counld* find any corner trees, that there was some talk about some there. I believe he said *thare* was said to be some poplar corners there and for us to look and if we found any to let him know it.

Q. Of what land were the corners that were said to be there a corner to?

page 349.]

Objected to by the contesting defendants.

A. It was said to be the McGee survey.

(Counsel admit that this is the same as the Coleman survey *somethims* called the Stuart Survey.)

Q. Did you look for marked line and corner trees up through that hill side at the time you speak of?

A. Yes sir I looked for corners where Daniel Justus told me to notice. I *dident* find any, only those little hacks I seen on the beech and cucumber.

Q. Do you know why Daniel Justus wanted you to look out for marked trees?

Objected to by contesting defendants.

A. Why he said if we found any to let him know it that he *dident* want to have any cutting done or them cut or something like that.

Q. Did you at that time see the poplars, the stumps of which you have spoken of having since seen?

A. Yes sir.

Q. Did you look at them to see whether they were marked?

A. Yes sir I was all around them.

Q. Have you or did you see them at any other time?

A. Yes sir I saw them at another time.

Q. How did you happen to see them then.

A. Why we went up to a little patch we had cleared to look over his corn and *they* was two squirrels in a hickory, just

out a little ways from these poplars and he hollowed for one of his children. I forget which one it was, to fetch him his gun and he shot one of them out and I shot the other one out.

Q. Did you notice particularly the poplar trees at that time, if so why?

A. Yes sir we went right by them. I was looking at them and went around one of them and had my hands on it the upper one.

page 350.] Q. Did you notice any difference in the grain of the trees?

A. Why this upper tree was a pretty nice looking tree and looked like it might be a splitting tree and the other one looked to be twisted to me.

Q. Did you at any time ever see any corner marks on either of these poplar trees?

A. No sir I never did.

Q. What sort of a looking mark was it on the beech?

A. It was a little small hack looked like it might have been done with a hatchet or *sang* hoe, if it was a hack at all.

Q. Where did the white oak, birch and hickory stand that Daniel showed you?

A. Just off below where he now lives, is where he showed me I *dident* go to them.

Q. When you were looking for marked trees at the time you were also looking over the ground with reference to taking a job of clearing did you go as fas as the two poplars you have spoken of.

A. Yes sir we went on quite a right smart little piece above them.

Q. Where was the cucumber that you saw marked?

A. Stood just up above the beech a little bit.

CROSS EXAMINATION.

By Mr. Sheppard.

Q. Who showed you the stumps up in the hollow?

A. Daniel Justus showed them to me; I knowed where they was any way—knowed where the trees stood.

Q. Did you find the triple lynn corner?

A. No sir I *dident* get up that far if it was there.

Q. How may hacks were on the beech?

A. I believe there was two if I *aint* mistaken.

Q. Were you ever at any other poplar trees on the Race Fork of Knox Creek?

A. I have been at poplar trees on the Race fork.

Q. Is your recollection of the other poplar trees you saw good enough that you can describe the grain of each of them to us?

page 351.]

A. I *dident* look at them as if I was going to buy them or anything like that and paid no attention what grain they had.

Q. You saw the lower tree was twisted, is that right?

A. It looked to me like it might have been twisted, it *wasent* as nice a tree as the other one at any way.

Q. You have seen the log lying in the hollow near the lower poplar stump have you not?

A. Well I have been there some I *dident* go down to the log but it looked to me like it might have been the log that fell from that stump, the way it was laying.

Q. Now don't you know that you were there at that stump, at the instance of Dan Justus and saw that crooked grained poplar log lying in the hollow below the lower poplar stump and that you are now testifying about the grain of the poplar tree when standing from seeing that crooked grained log and not from your recollection of the tree when it stood?

A. I said I seen it when it was standing and it looked to me like the log that might have fell from the stump I *dident* go down to, it to examine it.

Q. When did you see that tree standing there?

A. About five or six years ago as well as I recollect.

Q. When did you see the poplar log in the hollow below the lower poplar stump?

A. Two or three months ago, some where along there.

Q. Now don't you know that it was seeing the crooked grained log that makes you think you remember the tree was crooked grained?

A. It looked like it might have been twisted.

Q. You saw the tree *didont* you?

A. Yes sir.

Q. And you say now that it was twisted?

A. Yes sir.

page 352.] Q. A short time ago you saw a twisting poplar log below the lower poplar stump did you not?

A. It looked to me like it might have been twisting I couldent tell whether it was or not without I split them. I have seen trees that looked like they were twisting that split pretty well.

Q. Don't you know now whether that log was crooked or straight grained?

A. No sir I don't know which it was it looked to me like it might have been twisted.

Q. *Whic* one have you the best recollection of the grain of the tree or the grain of the log?

A. Well when the tree was standing it looked to me like it was twisted by the way the bark was *one* it.

Q. *Whay* did you go to Dan Justus for?

A. I just went there to see him because he was my connection. one *one* time I did.

Q. What did you go there for when you saw the poplar stumps?

A. I just merely went to stay all night with him.

Q. Where were you when he invited you to come?

A. He *didont* invite me at that time, I very often go to see my people when I know I am welcome.

Q. Who asked you to come here as a witness?

A. Jim Justus came to me and told me that Daniel Justus said for me to come here.

RE-EXAMINATION.

Q. What month was it if you remember that you went out to see the poplar stumps, some little while ago?

A. I believe it was in June if I mistake not.

Q. When you were there at that time did you pay any attention to the log to see whether it was straight

page 353.] grained or crooked, or did think anything about the grain of either the log or the tree at that time?

A. The log as I tell you looked to me like it might have been a twisted log. I *dident* go down to it.

Q. How near was the squirrels to either of the poplar trees?

A. Why they were not but a little piece, they were about thirty or forty yards.

Q. Did either of them run into or out of these poplars?

A. One of the squirrels run into the upper poplar.

RE-CROSS EXAMINATION.

Q. And when the squirrel ran into the poplar you looked to see if the poplar was crooked grained?

A. This here was in that one that *dident* look so much like it was crooked—the upper poplar.

Q. How close were *tou* to the log in the hollow on your last trip there?

A. I don't know exactly how far it was. Why it *wasent* over fifteen or twenty steps.

And further this deponent saith not.

his

JOHN J. x JUSTUS.

mark.

3 days and 80 miles.

Ordered that these proceedings be now adjourn-

page 354.] ed until tomorrow morning.

J. T. GRAHAM,

Commissioner.

Met this the 11th. day of September 1902 pursuant to ad-

journment on yesterday. Present same attorneys as on yesterday.

LOVENTIA STAFFORD, a witness introduced by the defendant King after being first duly sworn upon oath testified as follows.

EXAMINED

By Judge Stiles.

Q. What is your husbands name and where do you reside?

A. Alexander Stafford and I reside at Gilbert Post Office a short distance below the mouth of Gilbert Creek in Mingo County.

Q. At what place were you born?

A. On Ben Creek.

Q. How long have you lived in what is now Mingo County?

A. Nearly all my life, with the exception *ob* about six months in Lincoln and about the same in Mercer, I am now 39 years.

Q. Have you during your life time been acquainted with the old people living in the neighborhood where you have lived?

A. Yes sir.

Q. Have you heard those old people living in what is now Mingo County, talk about the different creeks in the country and the tradition or report concerning their early names and about the early settlement of the country?

Objected to by contesting defendants.

A. Yes sir.

Q. Have you heard them or any of them speak of the creek now known as Thacker Creek, flowing into Tug River some distance above this place as having had a different name before it was called Thacker Creek?

page 355.] Objected to by contesting defendants.

A. Yes sir.

Q. You may state what you have heard about it?

A. I have heard my grand father state that it had been *calced* Turkey Creek. And also West Stafford and aunt Agatha Brown, I have heard them say so.

Q. Who was your grand father?

A. Eli Trent.

Q. Is he living?

A. No sir.

Q. How long has he been dead and at what age did he die?

A. I think it was two years last winter since he died, I don't know how old he was but he was a very old man.

Q. How long ago do you remember hearing your grand father say that Thacker Creek was once called Turkey Creek?

A. Well I have heard him talk it more than once, I was about between the age of twelve and sixteen I suppose.

Q. Do you know whether your grand father had been a good deal of a hunter in his time, whether he had *travelled* about over these creeks and mountains of this country a good deal?

A. I have heard him speak of hunting a great deal.

Q. Where were you living at the time you remember of hearing him speak of Thacker Creek being Turkey, for the first time?

A. On Huffs Creek I think.

Q. Do you know whether he had lived over on the Sandy side as it is called, that is over on Tug River prior to that time?

A. I think he was raised over here some where.

Contesting defendants move to strike out the testimony of the witness.

CROSS EXAMINATION.
By Mr. Sheppard.

page 356.] Q. Your aunt Agatha Brown is the same person of that name that has testified here in this case

and West Stafford, referred to by you is the same person as J. W. Stafford, who also testified in this case, are they not?

A. Yes sir they are the same.

And further this deponent saith not.

LOVENTIA STAFFORD.

3 days 86 miles.

DANIEL JUSTUS, (sometimes heretofore spelled Justice), a witness introduced by the defendant King, after being first duly sworn upon oath testified as follows.

EXAMINED

By Judge Stiles.

Q. State your age, residence and occupation?

A. I am said to be forty-one last July, I live *of* the Race Fork of Knox Creek, Buchannan County, Virginia, and my business is generally farming.

Q. How long have you lived on Race Fork of Knox Creek at the place where you now live?

A. Growing on seven years as well as I remember.

Q. What tract of land do you live on and who is the claimant of it?

A. On what they call the Lonheart survey and George Harmon and Bill Bevins claim it.

Q. Where did you live immediately before you settled at the place where you now live?

A. On the Pounding Mill Fork of Knox Creek.

Q. Where did you live, I mean on Race Fork?

A. I moved first into a house about 100 yards below where I now live.

Q. On what tract of land was that house situated?

A. It was *siad* to be the *Coctman* survey.

page 357.] Q. How did you happen to settle on the Coleman survey and how did you come to move off from it?

A. Well I aimed to move on the Lonheart survey and got

mistaken in where I put my house, I put it on the wrong piece of land first. I *seed* I was mistaken in the piece of land and wanted to move on to a piece I had leased.

Q. How did you discover your mistake?

A. By Mr. Graham running some lines there, and Mr. Baldwin—Steve Baldwin, and we always called Graham, Sam Graham.

Q. What lines did they run go on and tell what you know and remember in regard to the surveying that was done by them?

A. As far as I know they was running the Coleman line, that is what they talked. I *couldent* tell you where they began, but there was a place there that they got into a dispute *sorter* over, and *couldent* find a corner. I may have that a little wrong, and have—Baldwin is the man that found the corner—said to be a triple lynn that stood up there.

Q. Where did they start from to go to the triple lynn to hunt for it?

A. Mr. Baldwin taken a start from down there what we call the head of pounding mill and reversed the line and found the corner. So he said he reversed it, for my part I can't tell, that is run backwards on it.

Q. Do you know where there is a birch, white oak and hickory corner, near your house?

A. Yes sir. It is the corner to three different surveys to my knowing.

Q. Did Baldwin run any line from that corner and if so in what direction?

A. Yes sir he run towards the triple lynn, but he *couldent* find them on that degree.

page 358.] Q. Where did that line take him with reference to the hollow or drain back of where your house now is?

A. They just run it towards the triple lynn and that took them up the *saide* of the hollow on the left side.

Q. Do you know where two poplar trees that have since

been claimed to be marked corner trees by the contesting defendants, in this suit stood in the hollow back of your house?

A. Yes sir.

Q. Did Baldwin while running for the triple lynns pass in the neighborhood of these trees and if so how near to them did he go?

A. We went in some eight or ten steps of them, or somewhere *alaong* there maybe a little closer.

Q. Do you know whether the distance from birch, white oak and hickory corner, gave out above or below the poplars, as he ran it?

A. It gave out above.

Q. By above I meant beyond or further up the hollow?

A. Yes sir further up the hollow, it gave out *betwixt* the poplars and the triple lynns, so they said their calls gave out, that is all that I know.

Q. Who was with Baldwin in running the line?

A. The old man Pleasant was one, and as well as I remember Mose Charles was one, and as well as I remember George Charles was one and as well as I remember Reece Davis was along. It was all run with the iden of getting some walnut timber the old man *pleasants* was buying under the survey.

Q. Did you go with them in their effort to run this line?

A. Yes sir part of it I did—Westley Justus was along with them as he was the man that found this triple lynn, his name was John W. Justus, he is dead.

Q. How much search if any was made by these persons that you have mentioned along that hill side on the left of the drain to find and locate the line called to, run between the birch, white oak and hickories and the triple lynn?

page 359.] A. They made a good deal, [illegible] searched there two or three hours at that time—they got bothered half the day and *dident* do anything hunting for it.

Q. How near the mouth of the drain did they begin to hunt for marked trees?

A. They begun along about 100 yards up in the mouth of

the drain and they carried the search all around about there a 100 yards or so square any way. I might be a little wrong where they begun; where they begun was where their calls give out and then they commenced to hunt.

Q. And where did they hunt, how far back towards the mouth of the drain?

A. Just around about in the bounds there, up the hill and down it and along that way.

Q. Did the scope of their search include the place where the two poplars stood?

A. Yes sir.

Q. Do you know whether any marked timber was discovered by any of that party at that time and if so what?

A. Yes sir there was some marked timber discovered,—they found a cucumber and a beech.

Q. Was that all that was discovered?

A. That was all that I heard anything said about on that search.

Q. When was a triple lynn found?

A. The next day after that.

Q. When was Sam Graham, surveying in there and was it before or after and what surveying was he doing?

A. Before and afterwards. One time he was running what he termed a north line through here and at another time he was running the Coleman lines. When he run the north line he *dident* run up that hollow or drain.

page 360.] Q. What did he do when running the Coleman lines near where you live?

A. He run from the birch to the lynn, towards the lynns.

Q. Did he have any difficulty in running the lines?

A. Yes sir a little. It was so said that his calls give out. I *wasent* right by when he run up through there,—he *couldent* find the lynns and I went and showed them to him.

Q. How long had he been there trying to locate the line before showed him the lynns?

A. I don't know sir, it *couldent* have been very long though.

I expect he had been there an hour or so.

Q. Do you remember who was with him *odr* how many?

A. I remember some of them. George Justus, Andy Justus, and Graham's son, so said to be, were with him.

Q. How long was he in the neighborhood if you know and where did he stay or stop?

A. He was there part of two days; he stayed with me and *holped* me put up *and* arch rock, him and his men.

Q. Do you know whether he and his men had searched that hollow for marked lines before you showed him the triple lynns or afterwards.

A. I don't suppose he searched the hollow but though he searched part of the timber.

A. Did he or the men that were with him, go to or near to the two poplars?

A. I don't know sir whether they did or not.

Q. Do you knew of Graham being on that creek surveying at any other time?

A. No sir I don't know as I do.

Q. Did you know of his surveying any of the Watkins tracts in the head of Race *of* on Paw Paw.

A. I don't sir.

page 361.] Q. Do you know for whom he was working when he ran what he called a north line to near your place and what survey that was supposed to be?

A. No sir I don't only just from what he said.

Q. He told you did he for whom he was at work and what he was doing?

A. Yes sir.

Q. What other surveyors besides Graham and Steve Baldwin, if any do you know of having run or hunted for any of the lines lying up in the hollow or on the hill side back of your house?

A. I don't know of any only just from what some told me that was there one day.

Q. Who were those surveyors?

A. Bill Baldwin, Bob Baldwin, and John McCoy was along with them and Steve Baldwin.

Q. About when was that?

A. Four years last winter as well as I remember; it was after the lynn corner, this was, had been found. How came the question to arise, them surveyors were the instigation of me settling on the first piece of land, by not being able to find the lynn corners, so they said.

Q. What search, if any, did you make yourself, at any time for the lynn corner or for marked timber that might lead you to the lynn corner from the corner near the mouth of the drain?

A. I don't know that I made any search for marked timber but as to the lynn corner I have searched a great deal.

Q. Between what points and over what portion of the hill side did you search, for marked timber?

A. Why I *couldent* tell you what points because there *aint* many points in it, but I hunted over the hillside a great deal.

Q. What I mean by points is how far up and how far down the hill side and how far up and down the hollow?

A. Well sir I hunted up and down from the hollow to the lynn corner and above.

page 362.] Q. Did that hunt take you to the two poplars?

Yes. Sir.

Q. Did you ever see a lynn standing near or between the two *poplas?*

A. Yes, sir.

Q. You may describe that, tell what you know about it and what became of it?

A. It was a great big growth of lynn with sprouts around it, with a bulge around at the bottom and a good big bulge at that, some of them cut it down, I disremember who it was. I cut a hole into the body of it one day and built a fire into it to smoke a squirrel out—I forget point blank whether I am the man that cut the hole in it or somebody else who was standing by, but any how the hole

was cut in it and a fire built in it from the bark off of the upper poplar that is now in dispute.

Q. Was the tree hollow inside at the time?

A. Yes sir and a big hollow too—the size of the tree.

Q. Was the lynn cut down before the poplars were?

A. Yes sir as well as I remember about it.

Q. Was it standing at the time the surveyors you mentioned were in there searching for the triple lynn or other marked timber?

Q. Do you know whether any of these surveyors or the men with them examined that lynn for marks?

A. Yes sir I know that Baldwin did— him and some of his men.

Q. Is that the lynn of the lynn stump that was examined by a party composed of Mr. Dixon, Auvil, Blankenship, Judge Counts and Squire Stacey at one time and by Mr. Dixon, and a man named Wilson and two others from Wayne County at another time, during the month of May last past?

A. Yes sir.

Q. Did there ever since you have known that place stand a sugar tree or a sugar tree stump or snag close by that lynn

page 363.] or within two or three or four feet of it?

A. No sir since I have known the place.

Q. Was there anything since you have known the place to indicate that a sugar tree had stood in the immediate neighborhood of that lynn, or where the lynn stump or the remains of it now is or within a distance of a good many feet or yards therefrom?

A. Yes sir there was a sugar tree stump about twenty-r twenty-five steps away or in the neighborhood.

Q. Is that stump there yet?

A. Yes sir.

A. Is that the nearest sugar tree that you ever saw, the nearest to the lynn?

A. Yes sir.

Q. Did you ever see the tree before it was cut?

A. Yes sir.

Q. Was it or either of the poplars marked as a corner?

A. No sir. If they was I never seed them.

Q. How close have you ever been to the two poplars or to that sugar tree and what occasion did you ever have for looking them over closely?

A. *Im* have been close enough to have my hands on them. I have looked them over for corners in looking for that triple lynn—I mean line trees in looking for that corner, and helped cut them down—one of them. I have looked the lynn over often.

Q. How much of the bark off the upper poplar did you use to smoke the squirrel out of the lynn?

A. I dont know sir, I used an armful.

Q. What kind of bark had that tree?

A. Great big thick bark, easy *knoched* off.

Q. Do you know whether you took bark off pretty well around the tree or only on one side?

page 364.] A. I took it off principally off the lower side.

Q. Would that be the side towards the lynn?

A. Yes sir towards the lynn.

Q. Do you remember what sort of bark the lower poplar *poplar* had?

A. Yes sir. It had as thin bark as ever I saw on a big tree I think.

Q. Do you know whether either of those poplars was ever used as a target for shooting?

A. Yes sir.

Q. Tell about it?

A. Why it was used, some of them was shooting at it, it had been shot at a great deal so far as that is concerned, there was the bottom of an old tin cup or can or some round piece of tin put up on the lower side, but I *wasent* there when it was put up and dont know who did put it up?

Q. On which tree was this tin put up?

A. On the upper tree. I shot two *shoots* at it to my knowing.

Q. Did you ever direct any search to be made for marked lines up that hill side beyond your house and if so whom did you tell to look for marked timber, if you remember?

A. Yes sir I have told two or three to my knowing. I told

Morg. Justus, John Justus; they was talking about taking a little job of work but my reference was to hunt for this triple lynn corner.

Q. Did they tell you whether or not they had discovered any marked timber.

A. For my part I never heard neither one say anything.

Q. What was done, if you know, with the tree or log that was cut from the lower poplar stump?

A. Why the log is laying there in the hollow right below it.

Q. Were you there when the persons I have mentioned including Mr. Dixon, as having examined the stumps, examined the poplar log lying in the drain below the lower poplar stump, upon either occasion?

A. No sir I dont think that I was there when they
page 365.] examined it. I was *their* when the last party examined it, they come twice to examine it.

Q. Do you know what became of the tree that was cut from the upper poplar stump?

A. Yes sir. I made a stable out of part of it and the other part I burned up—sawed it up and burnt it up in logs.

Q. Have you at any time noticed or had your attention called to a depression or hollow in the ground, some what below the lower poplar stump and some fifteen or sixteen feet away from it?

A. Yes sir.

Q. What would you judge from its appearance had made that hole or depression?

A. I judged a oak., There was an old rotten oak log laying down the hill from it but I dont know point blank that it come out of that hole or not.

Q. Describe the condition of the log and its appearance and its position with reference to that hole?

A. There was an old rotten log laying there just on the edge of the break with the effects of some of the spears of the roots hanging to it, I did not pull any of them out, the roots were hanging to the log, I *dident* pull any of them out of the ground. It appeared like the but of it was rotted more like than it was

down on the log the log I expect was two foot through. I believe a man could have pried pieces off of it with a hand spike or a crow bar it was so badly rotted.

Q. What became of that old log if you know?

A. I burned the most of it up with the lap of the upper poplar.

Q. Was that at the time the other stuff was rolled and cleared away?

A. Yes sir it was all the same spring.

Q. Did you do any surveying or assist in doing any surveying in the Knox Creek Country, last summer a year ago, were you with either Stone or *Matwews?*

page 366.] A. Yes sir I was with Stone when he done some surveying.

Q. Were you with him when a block was taken out of a large poplar on the southern bank of Knox Creek about a half or three-quarters of a mile down the creek, from the four white oaks corner?

A. No sir I *wasent* with him when the block was taken out. I was with him when the tree was found though with the marks on it.

Q. Who found the tree?

A. Mose Charles.

Q. Have you in your posession or have you had at any time a block from that poplar?

A. Well there is one up there what they said come out of that poplar is all I know. I have not got it in my possession it is up there yet. It is up on main Knox, it is just laying there beside of a log, it may not be there yet some one might have moved it, I saw it along last summer—some time along about May *of* June.

Q. Do you know why that block was left there?

A. I do not sir only just what I heard some of them saying. A man by the name of Blankenship said the hacks *wasent* deep enough.

Q. What Blankenship was that?

A. Willis Blankenship's boy—so said to be.

Q. Was he with the surveyors?

A. He said he was when they went up and hacked it out. He lived right there close below.

Q. What was your work when you were along on the survey with Stone?

A. Packing grub principally in a back poke, and hunting for lines *to*.

Q. Do you find much marked timber around over the country where the surveying was done?

A. Yes sir.

Q. Do you know what the marked timber was a—what surveys?

A. No sir I do not.

page 367.] Q. Have you had experience with clearing land and opportunity to observe how sugar and lynn stumps will last in comparison with each other after the trees are cut down?

A. Yes sir I have had some experience.

Q. Do you know how such stumps will last with reference *ti* each other, that is which will last longer and how much longer.

A. Well sir so far as I have experienced it sugar out lasts the lynn considerably, I *couldent* state how much longer I only that after cutting the trees down that after the lynn stump is gone the sugar tree stump is standing.

Q. You may state how the poplar stumps that we have been talking about first came to be discussed or reported or claimed be stumps of corner trees, so far as you know?

A. Well sir it has been about a year ago last August Mr. Gaujot, there and Mr. Campbell and Mr. Sheppard came to my place where I now reside and Mr. Harve Charles. They come up and Mr. Charles made them acquainted with me and asked me if I knew where, if I knew anything about where a man by the name of Sell, if I remember right, crossed. I told them I had heard where he had crossed or something of that sort and asked me if I knew then anything of any old corners there that I *dident* know anything about, I just don't remember the just language, *I told them I dident*, but shortly up come a little shower of rain and we all picks up and goes up to the house from the gap—the

gate. Mr. Charles he taken me and taken me out behind the house and told me where *these* men were from and what they was a wanting,—asked me if there *couldent* be a corner fixed up there for them—or if I knew if there was any old hacked trees or something that way. I told him that I *dident*—nor *couldent* that I knowed of at that time. But in talking on he said that if there could be we could bust the Wilders up and get rid of them. Well I told him that I could fix him one if that was the case—if they could get rid of them on such footing as that. Well we kept on about it a little bit—me and Charles and we goes back around where the other gentlemen were sitting on
page 368.] the porch. I forget which one of us it was spoke and told them that there was an old corner up there in the field, cut down and destroyed and burnt up. Well they wanted to know then what kind of a corner it was—I disremember though which one of them it was spoke. I told them it was two old poplars and a lynn and had been a sugar standing in the roots of the lynn the sugar was destroyed burnt up and gone, as well as I remember I told them it was an old sugar snag and that they were all hacked as corners. We went then and showed them how they was hacked and these men considered then that it was something or rather unusual and begin to enquire into the merits of it—asked me if I could fetch up any proof of that effect and I told them I thought I could and then I went to work at it, and I reckon they got plenty of proof to that effect, that is me and Charles together went at the proof.

Q. What did you do towards getting proof or statements to bear out the assertion that the trees were marked?

A. I went to some parties and told them we could get rid of the Wilders providing we could make such a case as I wanted. I went to Reece Davis and I went to Riley Lester, I went to William A. Lester and went to Morgan Justus and sent for Sim Justus and sent for Miles Lester who came to me and it appeared like every fellow told as dangerous a tale as he could towards the marks, trees and hacks, as well as myself.

Q. Did you see any map or print—blue print or anything of that sort purporting to be a map of the country or of the King survey?

A. Yes sir.

Q. Did any one explain what the effect of making the corner at that place would be upon the size and shape of the survey?

page 369.] A. No sir they *dident* explain making of a corner or nothing of that kind. Harve Charles said if we could fix a corner out there in any shape we could get rid of the Wilders, we could rule them out.

Q. What explanation was made with the aid of the map, if any?

A. Well they had a map there showing how the survey laid—that they had found so many corners and there was another one somewhere according to the map in that direction and if it could only be found they could cut them off from there to the mouth of Gilbert Creek and that would leave such a narrow scope that the Wilders *wouldent* look after it or something to that effect

Q. Did you at that time know about the suits that Mr. King had against a good many people over on Knox Creek?

A. Yes sir, it was talked about frequently about fighting the Wilders. I did not know about any suits, that is on Knox Creek.

Q. Did you know about suits at Abingdon and Harrisonburg and elsewhere, in which the people were fighting Mr. King?

A. Nothing only by talk.

Q. Whom do you mean when you speak of the Wilders?

A. I always speak of Mr. Stiles here, the Colonel here and Mr. Dixon and King, they always called them the Wilders.

Q. Did you understand that the Wilders were claiming a great lot of land on Knox Creek and its waters against the people living in that country?

A. Yes sir, and taking it from them as they could get an opportunity.

Q. Was any objection made to the lynn as a corner?

A. Yes sir there was something said about it but I disremember There was some of the arties spoke and said that very *ofter* a lynn was *pmarked* in preference to a poplar and very often in preference to a lynn. The talk came around about there not being three poplars there that old people very often in marking a tree would make a mistake and take a lynn for a poplar.

Q. Who made this explanation that you remem-
page 370.] ber?

A. Harve Charles as well as I remember.

Q. Was Charles directing *the* you in the corner tree matter

A. Yes sir, rather

Q. When was the next meeting of yourself and the gentleman you have spoken of at your house after the first meeting?

A. As well as I remember about it was the next day.

Q. And who was there?

A. Davis and Riley Lester and William A. Lester, Jake Lester—his proper name is Miles Lester, besides the lawyers and Charles.

Q. What was done there at that time?

A. Examined some men to see what they knowed about the stumps and the marked trees,—taken sort of a map I reckon it was of the place.

Q. Did they have anything to take pictures with

A. Yes sir they had something that they could take pictures.

Q. Were you acquainted with any of the "Wilders" at that time

A. I had saw you (Stiles) at one time so long ago, I dont know whether I would have *know* you had I met you in the road.

Q. When was the first time you met Colonel Wilder, that is to know him?

A. Last Spring.

Q. At what place and how did you come to meet him?

A. At Charleston, West Virginia. Me and Watkins Blankenship went there to him. Watkins Blankenship told me that he sent for me and he wanted to see me. I asked him what it was about he said he *dident* know unless it was something about

them corners.

Q. Did you have a talk about those "corners" with Colonel Wilder at the same time?

A. Yes sir at Charleston.

p. 371.] Q. Who was present at the time you had the talk?

A. Watkins Blankenship, Dixon maybe, C. L. Dixon

Q. What did you tell Colonel Wilder about this matter of the alleged corner trees or marked trees?

Here counsel for contesting defendants request to ask the witness a question before proceeding further. Which request is granted by the commissioner.

Q. Was the statement you made to Colonel Wilder there at Charleston reduced to writing?

A. Yes sir.

Q. Were you sworn to it?

A. Yes sir.

Q. Which kept the writing you or Colonel Wilder?

A. Colonel Wilder.

To save time counsel for contesting defendants *deferres* objection to questions and will embody the same in one objection to all of the questions at the conclusion in chief.

And thereupon the question propounded to the witness by the *atornet* for King was again read to the witness and answered by him as follows.

A. I told him they *wasent* there.

Counsel for the contesting defendants demands the production and filing of the affidavit and objects to its contests being given by the witness.

Thereupon the defendant King by his attorney tendered and filed an affidavit of the said Daniel Justus, dated April 21st. 1902 and sworn to before R. P. Flournoy, Notary Public of Kanawha County. Which said affidavit, for identification is Marked Daniel Justus No. 1.

Q. At or about the time that this affidavit and your oral

statement from which it was written did Colonel Wilder make any agreement with you as to what he would do if you would make a disclosure of the facts in your knowledge
page 372.] concerning the alleged marked trees on Race Fork and what had been done towards making them answer as a corner of the survey, etc.

Counsel for the contesting defendants object to each and all of the foregoing questions and move to strike out each and all of the answers.

By Mr. Stiles. Do you object to this question, if you do I will withdraw it.

Answer by Mr. Sheppard. I will withdraw the objection to the last question and ask that the witness answer it and file the contract, which is in writing.

Answer by the witness: Well sir he gave me $100.00 but he made no agreement—he paid me for it. He *didont* tell me what he would because I *wouldent* talk with him but very little. He gave me $100.00 down and said that he would give me $400.00 more.

Q. Did he give you any paper at that time?
A. Yes sir, then or shortly afterwards.
Q. Have you that paper now?
A. No sir.
Q. Did Colonel Wilder keep a copy or duplicate of it?
A. As well as I remember he did.

Here counsel for defendant King tenders to the commissioner duplicate of the agreement referred to, which is filed by the commissioner and marked Daniel Justus No. 2. This agreement *wwas* read to the witness and identified by him.

Q. Were the persons you have mentioned—that is Colonel C.

L. Dixon and Blankenship all the persons present at your interview aforesaid.

A. No sir there was a woman there by some means or other.

Q. Were they the only ones other than the lady stenographer?

A. Yes sir.

Q. Did you ever see Mr. King?

page 373.] A. No sir.

Q. You have summoned and served subpoenas on some of the witness who have testified here in the last two or three days, I believe, is that so?

A. Yes sir.

Q. Did you know what their testimony was to be?

A. I *knowed* what it ought to be if they would state it correct, I *didont* know what it would be.

Q. Did you know and have you for a long time known what their acquaintance was with the premises around your house and what they had done and what had gone on there.

A. Yes sir.

CROSS EXAMINATION.

Before proceeding with the cross examination the contesting defendant move to strike out all of the foregoing answers except the filing of the affidavit and contract and admitting the payment of $100.00 thereon.

By Mr. Sheppard.

Q. Where did you first see C. W. Campbell and me (Sheppard.)

A. At my gate, the first I ever seen them that I *knowed* of.

Q. Who was with us?

A. Mr. Charles, that is all that I remember of.

Q. Don't you remember that C. L. Gaujot was along.

A. Yes sir as well as I remember he was along. I thought you mentioned him before.

Q. Mr. Charles called and you came down to the gate?

A. I reckon it was Charles—one of them did.

Q. You then climbed up and sat on top of the fence when Mr. Campbell asked you if you knew where surveyor Sell had crossed Race Fork, is that right?

A. Yes sir—one of them asked me.

page 374.] Q. You answered that he crossed about a half a mile above there did you?

A. I think so.

Q. Then I asked you if you knew what search, if any, Sell made for corner trees, to which you replied that you *dident* know of his searching very much, is that right?

A. Yes sir.

Q. Then I asked you if you knew of any old corner trees standing in that section to which you replied no, I defy any man to show any corners to that survey standing, is that right?

A. I think so sir, as well as I remember?

Q. Then I asked you if you know of any old corner trees about there that had been cut down, to which you replied, "Now see here stranger a man can some times ax to dam many questions," and then Harve Charles said to you "No Daniel don't get mad at these men for they are the lawyers for the people in the King suit? Is that right?

A. I think it is sir about so?

Q. Harve Charles then told you who we were and you called my name and asked if I was the man that was over at Abingdon at that trial, and I told you I was, is that right?

A. Yes pretty much—something about that conversation.

Q. At that time a rain came up and we got down off of our mules and horses unsaddles and carried our saddles up on to your porch and sat there during the rain, is that right?

A. Yes sir as nigh as I remember.

Q. While we sat there on the porch I asked you again if you

knew where there were any old corner trees standing or where any had been cut down and explained to you that our object was to establish a corner of the King survey that was called for on a small branch of Knox Creek and in doing so *I took from my saddle bags a copy of the survey and map of the 500,000 acres and read the description of the survey to you, is* page 375.] *that correct?*

A. As well as I remember it is.

Q. And when I called out the three poplars and a sugar tree on a small branch of Knox Creek, you stated that you could show those trees to us, or rather the stumps of the trees in five minutes, is that right?

A. I think it is.

Q. To which I said Justus if you can we will be mighty glad for you to show them to us at once and *when the rain was* over you took us up and showed us the stumps you have described to day, as the two poplars and told us that *that* the old sugar tree snag stood right on the lower side of that lynn and that you burnt the remains of the sugar tree snag up?

A. Yes sir.

Q. We then came down to your house and I asked you to repeat what *you know about* the trees and corner marks on them so that I might write it down and I did write down and read to you the substance of the statement made by you on that occassion, is that right?

A. That is right sir.

Q. I will now read you the statement as written down in my book at that time and ask you if it is the statement you made:—"Daniel Justus lives on Right fork of Race, says Sell crossed fk. about one mile above his house and about two miles from forks of Race Sell said he wanted to run to the Coleman poplar corner on Home Creek about one mile above Louis Elswick's house on left side of creek coming up Home Creek, in a little hollow and about thirty steps from head of it. Elswich lives at mouth of branch. Have seen the tree and it has six

marks on it. Yet standing and is corner of lands owned by citizens. Further says I have lived here five *yours* next month (September) and in the house where I now live about two years. First lived about two hundred yards below my present house and have lived within a mile of this for ten years. Was raised on Knox Creek and have lived on same nearly all page 376.] my life. I am forty years old July 3rd. 1901, my father is Hiram Justus who lives on Laurel Fork of Knox and is about sixty one years old I think. About *eight years* ago and about one year after I moved to where Reece Davis lives I was *sanging* in the hollow where I now live and noticed a sugar tree, a poplar and a lynn marked as corner trees and a short time afterwards I found another poplar tree marked as a corner standing near by the other trees. All these trees were marked with six hacks each—three marks each on the east and three hacks each on the north-east.

My brother James Justus was with me and saw the trees and marks. At that time I was trying to locate a piece of vacant land here for myself and kept the matter of finding the corner trees private. Afterwards I found there was no vacant land here and George Harmon got me to move on his land where I now live and agreed to give me 50 acres of it to live here and hold possession for him and to sell me 50 acres more. Henry Stuart also got me to look after his land on this creek. I remember when Sell was surveying through here and understood he was running the King survey. His presence here—trying to locate an old survey caused a great disturbance among the citizens. They thought King was wrongfully trying to take the citizens land. I knew Sell had been hunting in here for a corner and I thought if these corner trees were found they would help King locate his tract and I went and cut the two poplars down and *burned the lynn and sugar* tree down. They were both hollow and dead and stood against each other. I then burned the logs up so as to destroy the marks. I burned all the *buts of the trees up.* I have to day pointed out the stumps of

the trees to Harve Charles, C. W. Campbell, C. J. Gaujot and John A. Sheppard."

page 377.] A. I made that statement principally as well as I remember.

Q. You also told us on that occasion that the poplars of one of them was cut at a clearing you had on *christmas* day 1895, did you not?

A. I did sir.

Q. And you and your wife told us the names of the men who were there at the *clraring* and also told us that two, of the Lester boys cut the lower poplar, and your wife said that her and one of her brothers cut the *beech* line tree and on the day after the clearing, Miles Lester was at your house and you and him cut the upper poplar, is that right?

A. Not all together.

Q. Wherein is it wrong?

A. It was a month or such a matter afterwards when Miles cut the other poplar. If I spoke it the next day very likely I spoke it but it was through ignorance of me. The balance of the question is right.

Q. We asked you if any one else had seen the trees standing marked that you knew of and in reply to that you told us the names of the boys who had helped to do the cutting and that they would likely remember that fact, is that right?

A. I think so sir.

Q. We then told you we would like to get you to help us get them there to the stumps on the following day and you went after some and sent for others, is that right?

A. Yes sir.

Q. And on the following day, which was the *23rd. day of August* Campbell, Gaujot, Harve Charles and Me returned to your house and found there, or they came there after we did, Miles Lester, Riley Lester, William A. Lester and several others among them Reece Davis and you and Miles went with us to the stumps of the poplars and with a knife indicated on the

stumps where the marks had been and the other persons who had helped to cut the trees except John Harrison

page 378.] Lester, pointed out the stumps of the trees and told us which of the trees they helped cut and the marks they saw, is that right?

A. Yes sir.

Q. On that day several of us went down into the hollow below the lower stump at my request to look among the pieces of logs not wholly burned up and see if we *counld* find any piece that might be sufficiently sound to find a mark on, is that right?

A. Yes sir as well as I remember it is.

A. In making the search I got up on the poplar log now lying there and called attention to the fact that it looked like a *but* cut and suggested that it might have marks somewhere in the log, to which you replied, "No you will find no marks in that log for its one that I cut up on the hill above here and slipped down for a saw log. Bill Bevens claimed an interest in the Harmon survey and got me to cut some saw logs here and this is one of them you can see here at the little end of the log where it was trimmed for slipping." After which I gave no further attention to the log, is this right?

A. That is right sir.

Q. And you further said "Men you will find no *buts* from them two poplars here for I burnt hell out of them," *didnt* you?

A. Yes sir.

Q. After this you aided Mr. Guajot as one of his work hands in the survey done by Stone and Mathews in running to and from the poplar stumps, did you?

A. Yes sir, I took the back poke.

Q. This surveying was done in the fall of 1901, was it?

A. Yes sir I reckon it was.

Q. And in the spring of 1902 Watkins Blankenship came to

your house and told you that Colonel Wilder had sent for you, is that right?

A. Yes sir.

Q. And you went with Watkins to Charleston?

page 379.] A. Yes sir.

Q. Had you up to that time ever told Gaujot, Campbell or me that those poplar trees were not marked and that the sugar tree never stood there?

A. No sir.

Q. Had you ever told any one else connected with us such thing?

A. No sir, not connected with you.

Q. When Watkins Blankenship came *yo* your house he told you in speaking of the stumps and the corner trees "That if there was anything that could be corrected about the *mater* there was $500.00 for the advance and you asked him who it was and he said that it was Colonel Wilder had sent the message, is that true?

A. That is correct.

Q. Then you went with Watkins to meet ColonelWilder did you?

A. Yes sir.

Q. And did meet him at Charleston and made the affidavit filed as Daniel Justus number 1 and the agreement filed as Daniel Justus number 2?

A. Yes sir.

Q. And he paid you $100.00 in the town of Charleston

A. Yes sir.

Q. Did you see me on the train as you were going to Charleston

A. Yes sir.

Q. Did I ask you where you were going?

A. Yes sir.

Q. What did you tell me?

A. Told you that I was looking for a niece of mine that had left home.

Q. You also *tols* me that she was about seven miles above Catlettsburg up the Big Sandy River?

A. That is right

Q. Watkins Blankenship was lying in a seat in
page 380.] front of you with his face covered with his hat
and I shook him up and asked him where he was going and you replied that he was going with you after your niece, is that right? A. Yes sir.

A. When you got to Kenova you and Watkins got off the front end of the coach and on going down the stairs met C. L. Dixon about half way on the stairway and he turned around and went back with you into the depot and after a few hurried words you and Watkins came back out of the same door where you went in and went on down with me to the street car line and told me that you were going to Catlettsburg, is that a fact?

A. All is correct except a meeting Dixon on the stairway, there as I never saw him until I got into a room down there.

Q. Don't you remember that the man who met you on the stairway and hurried back into the *dpot* with you was the same man you afterwards met as Dixon?

A. I *dident* see him to know him he might have done it.

Q. While we were standing at the street car line the car for Huntington came along, I got on it and when it pulled out you and Watkins left the place where the street car stopped, went down to the Glenwood Hotel and there went into a room and had a talk with C. L. Dixon, is that right?

A. I don't know what hotel or what room it was in, we went into a room and had a talk with Dixon.

Q. Where did you go, from there?

A. I disremember just where we went—we went out there two or three places.

Q. You and Watkins went out together and Dixon went alone and you all three met in Catlettsburg did you not?

A. I dont think we did sir.

Q. Where did you get the train that evening for Charles-
ton

page 381.] A. Whereever the depot is there, I dont know where the depot is.

Q. Who went with you to Charleston?

A. Watkins Blankenship.

Q. Where was Dixon?

A. Right with us.

Q. On the 20th. day of April 1902, there was registered at the St. Albert Hotel, Charleston, Dan Just, from Ironton, Ohio, and J. N. Watkins, from Ironton, Ohio, who were assigned to room 35 and C. L. Dixon was assigned to room 36, was that you and Watkins Blankenship

A. I dont know sir whether it was or not is *wasent out* names individually?

Q. Who wrote your names on the register?

A. I do not know sir. I *dienet* know that we registered.

Q. Do you know that you and Blankenship occupied the room next to Dixon

A. I think we did sir.

Q. Who took you to where you found Colonel Wilder.

A. Blankenship, as well as I remember, or Dixon one maybe both were with me.

Q. Who signed your name to the affidavit you made for Colonel Wilder?

A. I disremember.

Q. Can you remember that Watkins Blankenship had a pen in his hand when he asked you to make your mark?

A. I disremember whether it was Watkins or who, it was some of *the* done it.

Q. When you made the agreement you also touched the pen and made your mark to it did you?

A. I think so.

Q. And *Colonol* V. A. Wilder also signed it did he?

A. Yes sir.

page 382.] Q. After this was over you came back to Kenova on the night train and took the morning train

for home and went up Knox Creek on the same log train that C. W. Campbell and I were on?

A. Yes sir.

Q. We asked you to go with Stone, surveyor, who was then taking, Mr. Reynolds, another surveyor over the work you had previously helped Stone to do and you declined to do so, stating that your hip was hurting you and did not go to help Stone?

A. That is correct.

Q. While on your way to Charleston you told me that you would return in a few days and promised me that you would go to Stone as soon as you came back and go with him and Reynolds over the lines is that right?

A. That is right sir.

Q. Shortly after that Mr. C. L. Gaujot was up on Knox Creek and you gave him the copy of the contract you had entered into with Colonel Wilder and you promised Gaujot to come to Williamson and bring Reece Davis along with you and tell what had *happeeden* between you and Colonel Wilder and you did come and told it, is that the fact

A. That is right.

Q. Who got Reece Davis to come here that day?

A. John McCoy.

Q. Then C. L. Gaujot did not get him?

A. Yes sir he come to McInturff's where Mr. Gaujot was.

Q. Did Mr. C. L. Gaujot, C. W. Campbell or me or any one for us offer to pay you or did we pay you anything for the statement you made to us at your house?

A. No sir.

Q. Did any of us pay or offer to pay you anything in any way except the wages you were to be paid and were paid for your work?

A. No sir.

Q. How much were you paid per day?

page 383.] A. I'll be dogged if I know.

Q. Did you ever tell Campbell and me anything different about the corner trees or Mr. Gaujot until the *5th.*

day of May 1902, when you were here in the town of Williamson, and told us that you had told Colonel Wilder something different about the corner trees and made an affidavit for him?

A. If I had before I was drunk or something and *dident* know it

Here the counsel for the contesting defendants read to the witness his affidavit "Daniel Justus No. 1.

Q. The affidavit I have just read you which you made for Colonel Wilder at Charleston has you to state "On or about July or August 1901 John A. Sheppard of Williamson, West Virginia, in company with H. G. Charles of Knox Creek, came *eto* affiants house" and after reciting certain conversation, as taking *pplace* between you, Harve Charles and Sheppard, that affidavit further states "The next day after the first time said Sheppard and Charles *where* there, Sheppard and C. W. Campbell of Huntington, Claud Gaujot, a surveyor of Williamson and Reece Davis and said Harve Charles came to affiants house again." Is that statement in that affidavit that Harve Charles and I came to your house together the day before I was there with Campbell, Charles and Gaujot, true?

A. They never came there by themselves in their lives that I remember.

Q. The first time you ever saw me was on the *daty* that, Campbell, Gaujot, Charles and I met you at your gate, *isent* that the fact?

A. That is the fact

Q. The affidavit I have read to you seems to have been drawn with a view of charging me (Sheppard), C. W. Campbell and Claud Gaujot with having persuaded or lead you on to an attempt to fraudulently try to establish a corner there with knowledge upon our part, that such never existed; I will now ask you to state if we in any way by offering

page 384.] you promises or otherwise, hired or induced you to undertake to establish a false corner

Objected to by the defendant King because the affidavit can be *interpretted* by the court from its own language and was not

offered in evidence by the defendant King, but its production demanded by attorney Sheppard and the document put in evidence by him or at his request, and because the question is otherwise, improper.

A. They never tried to hire me in life, but *by coming* and showing of a map *of the survey, laying of it down*, giving of the corners as directed in the map, that there was one *absently*, and if it could be found, we could cut the Wilders off, saying that there was three poplars and a sugar called for and if they should be found we would rule them from *their* back to Gilbert Creek.

Q. If it be true that the trees, the stumps of which you pointed out to us were not marked as corner trees did Campbell, *Gaulot* or me know it and induce you by promises or otherwise to procure false evidence or make false statements to try to establish it knowing them to be so?

A. Not to my knowing.

Q. The affidavit you made for Colonel Wilder after reciting that M. G. Charles and me (Sheppard) came to your house together and fixing the time on the day before, Campbell Gaujot and others were there with me, further says "Affiant after listening to the conversation of said Sheppard went to one side away from Sheppard and talked over the matter with H. G. Charles and on thinking it over further affiant told said Sheppard that there an old corner etc.," did such a thing as that ever occur, when there was no one present but Harve Charles and you and me?

A. No they was all by as well as I remember—setting by.

page 385.] Q. I will ask you now to state if it is not a fact that when the *the* rain came up on the first day we were at your house, if we did not have to hurry to get on to the porch of your house out of the rain and if you did not while sitting on the porch and before *Campbell, Gaujot*, Charles, you and I had *separated*, state to us that you knew where the three poplars and sugar tree had stood and tell us that you could take us to the stumps of them in five minutes and

while sitting on your porch, during the rain and at the time of your statement point out the direction up the branch where you afterwards took us to the stumps?

A. Yes sir the principal of that is correct. Me and Mr. Charles went out on the fence, or on a rail that is stuck in the fence. Mr. Charles told me that these men were fighting of the Wilders and the Wilders was a taken of the peoples land and these men was a hunting for a corner there *some2where* in that neighborhood, in order to try to beat them out and cut them off to such a narrow point that they would have nothing that they would contend for, or something that way, and says "Daniel cant you think of no old corner here if you can we can get rid of the "Wilders". I says "Mr. Charles you understand business better than I do is this a fact? he says yes sir it is. I says "Or are you a running a bluff on me aint this Wilders men themselves?" He says "No Daniel it aint these men have "fit Wilders for ten or fifteen years and have beat them wherever they have went." And under the consideration of that I says "Harve *they* was an old corner up here. He says "Is it a corner of any other survey?" and I says "No sir it aint" Well he says "What kind of a one is it. I says it is a poplar." He says just one poplar?" I says "Yes sir." he says "One poplar is no good by itself aint there *nara* another poplar growing near it?" I says No. sir. He says, "This matter has to come under the act of three poplars and a sugar?" I says, "Harve there aint such timber as that in these bounds, that is close together. He says "How close is the next poplar to that tree?" I told him it was about ten or fifteen steps and then he says "Is there any more timber about it and I told him there was
page 386.] a big lynn betwixt them. He says "Was it marked too." I says we can fix some marks on it" and asked how the elevation of the marks ought to be and he told me they ought to be pointing towards the Gilbert corner and by so—these parties a coming there, also claiming that they was a fighting of the Wilders by the information of Mr. Charles these corners

were made right there, and was introduced to Mr. Sheppard, Mr. Campbell and Mr. Gaujot.

Q. In answer to a question above which I now read you (question read it is next to the last question on page 72) you say "No they was all by as well as I remember—sitting by," do you mean that we were by when you had such conversation with Harve Charles as you have detailed in your last answer?

A. No sir.

Q. What fence did you Charles go to when you had your talk?

A. A little fence that run right up by my back door.

Q. Now tell me if it *isent* a fact that you and Charles did not go back to that fence until after the rain was over?

A. It was a misting rain when we were sitting out there, it had been a pretty hard shower.

Q. Is it not also true that you and Charles did not go back to that fence until the question arose on the porch about who was present when those poplar trees were cut and who helped cut them?

A. I object to that. The question arose between me and Charles before ever the stump question was mentioned on the porch because I thought they were the Wilders playing off on me.

Q. I will ask you now if it is not a fact that your statement that you thought these men—referring to Campbell, Gaujot and me were Wilder's men and just playing off on you or fooling you all took place down at the gate and did not Harve Charles there at the gate and while you sat on the fence explain to you that we were the peoples lawyers and did you not then and there say that if that was the fact we should get down page 387.] and come in?

A. I did not set on the fence. I went out and shook hands with them all and talked to them till the rain come up there, and this conversation did occur so far as Shep-

pard says there and we went on up to the house, then is when me and Mr. Charles taken our talk out behind the house.

Q. Did you not while at the gate, and after finding out who we were and talking about where Sell crossed Race fork with his survey and what search he had made for the corner, say to us to get down and come in that you could show us where the corner was?

A. I did not.

RE-DIRECT EXAMINATION.

Q. Were you acquainted with Harve Charles before he came to you with these gentlemen, Sheppard and others, if so how long?

A. I have been acquainted with him twenty-five or thirty years.

Q. Where did he live at the time mentioned?

A. At the mouth of Paw Paw.

Q. Did you ever hear or think of such a thing as a poplar corner or sugar tree corner or marked trees of that sort up, in that hollow until Charles and the other gentlemen came to you that day last August, a year ago?

A. Not of that effect.

Q. What did you do if anything *tourds* carrying out the plans that Charles arranged with you for fixing up a corner?

Objected to because that has been asked and answered.

A. I done all I could do and tried to do more than what I could—or did.

Q. Did you make any effort to provide marks or blocks that would carry out the plan?

A. Yes I told a man that I would give him a five dollar bill if he would get me a block that had hacks in it and bring it there and burn it so that it would carry out them trees; I *dident* tell only one I told four of them and two of the men was knowing that these trees

page 388.]

had no hacks on them, the other two owned the timber that we wanted the block out of.

Contesting defendants move to strike out the answer.

Q. Did you get the blocks?

A. No sir—one *dident* show deep enough for the length of time it should have called for; the other one broke off right where it was hacked and knocked us out of that.

Q. Mr. Sheppard read you a statement from his note book and you say you stated to him at one of the times heretofore mentioned at your house, substantially what he read to you, was that *stat4ment* true so far as it relates to there having been any such marked trees as you described or was it a part of the plan fixed up between you and Charles as you have described?

A. It was not true the statement *wasent.*

Q. Did you ever swear to such a statement?

A. No sir.

Q. Were you ever requested to?

A. Yes sir.

Q. State when that was and where?

A. Some time along last spring, they called upon me to make a statement—Mr. Sheppard did, took me into a room and asked me and took me before a Notary, so they said it was and qualified me and asked me if I made him that statement and read it over and I told him I did and in questioning me he asked me I forget the words, but I said Mr. Sheppard, don't question me about that if you do I shall open the ball. They questioned me there to know whether it was a true statement or a verbal one, but after I had went out of the room they had a man along with them by the name of Phelps—he come out where I was and says was this a statement that you made a true one, I says "You play hell," he left me and went on back into the room.

Q. *Wheere* was this last conversation in regard to the statement made and *hod* did you come to be there?

page 389.]

A. It was here at Williamson. I walked there. How I *happed* to come to Williamson. Mr. Gaujot and another man brought me down here—Mr. Felts.

Q. You stated in reply to a question of Mr. Sheppard that you did not tell him or Mr. Campbell about these trees not being marked or about there not being any corner trees there, or something to that effect, did you tell any one else about it, other than Colonel Wilder?

A. Yes sir, I told different ones.

Q. Any of the surveyors?

A. Yes sir I told G. S. Stone.

Q. When and where, if you remember?

A. There at the corner—where it was supposed to be a corner. I have forgotten the time, he has been there so often.

Q. Was it while he was survey?

A. While he was surveying or looking around about it I don't remember.

Q. Do you remember who if any one was present besides you and Stone?

A. It bears on my mind that there was a man there that had run a line through there years ago, and Levy Lester was there, I think.

Q. Were you present when Stone and Mathews, or either of them dug into or examined the old lynn stump?

A. Yes sir.

Q. Did you see them dig out any rotted wood, or roots or bark of any kind, from that old *stimp* or about it?

A. Yes sir.

Q. What kind of wood was it?

A. I called it lynn.

Q. Did it come off from that old stump?

A. Yes sir.

Q. Did they or either of them find or dig up

page 390.] any rotten sugar tree wood at that place?

A. I did not see it if they did.

Q. Mr. Reddy states in his testimony and report in this case that he found some *loos* sugar tree roots close by the old lynn stump, do you know where those roots came from?

A. Yes sir, they come off another sugar tree stump about thirty yards from the place where Mr. Reddy was looking at—had them there comparing them to the old lynn. I dug them up and took them to the lynn to compare them with the lynn roots, Mr. McInturff and his wife were there and several more at different times.

Q. There has been a beech line tree spoke of—a beech side line tree, did you see any hacks of any kind on such a tree?

A. Yes sir.

Q. On which side were they?

A. On the lower side—the east side.

Q. Are there a great many Justuses on Knox Creek?

A. I consider there are, I expect there is two hundred on Knox Creek.

Q. Are there more Justuses than people of any other name on that creek?

This and the last two questions objected to by contesting defendants.

A. Well I *wouldent* know which to say the Justuses or Blankenships.

And further this deponent *ssaith* not.

his
DANIEL x JUSTUS.
mark.

5 days and 85 miles.

page 391.] SINETT JUSTUS, a witness introduced by the defendant H. C. King after being first duly sworn upon oath testified as follows.

EXAMINED
By Judge Stiles.

Q. State your age, residence and occupation.

A. Age 32 years, I live *of* the Guesses Fork of Knox Creek and I farm and am a constable of Buchannan County, Va.

Q. Are you any relation to Daniel Justus and if so what?

A. Yes sir I reckon we are—we are brothers—said to be.

Q. *Dou* you know where he lives?

A. Yes sir.

Q. How long have you been acquainted with the hollow up back of his house?

A. Well I expect as well as I recollect about six years.

Q. Do you know where there are two poplar stumps up on the left side of that hollow that have lately been talked about and claimed by some of the parties to this suit to be the stumps of corner trees or marked trees?

A. Yes sir I know where they are.

Q. Did you ever see the trees themselves when standing and if so how did you happen to do so and what were you doing there?

A. I saw the trees that they say was marked when standing. I was looking—Daniel Justus was showing me a line there between the Harmon survey and the Coleman survey, whatever they call it and he was a showing it to me and said that he was afraid he would get into trouble that he thought he had settled on the wrong piece of land and I expected to move there myself until I seen the piece of land I would settle on would ruin my house *sest* and I *dident* go when I went there we went up and told him to show me *these* line that was said to be between these two surveys, commencing at the north side at the mouth of a little drain—he showed me where the corners was.

Q. Did you make any examination up that hill side trying to follow that line?

page 392.] A. Yes sir.

Q. How much did you look around how far did you go up the hollow and up the hill side?

A. Well looked a right smart piece—some near two hundred yards, we went to a cliff on the hill side, as far as I thought the land was any good, as I *recolllect* now.

Q. Did you see any marked timber of any kind up in that neighborhood?

A. Yes sir. I saw a beech and a cucumber that was marked, that was all the marked timber I saw.

Q. How near to the two poplars in question did you go at that time or at any time?

A. I have been right to the poplars and was right to them then if that is the ones they claim as the corner trees, which I hear is the ones they claim.

A. Did Dan at that time know where the line in question ran or did he seem to know?

A. He showed me up the hill side where he thought it run.

Q. Did he know where the line ran on the ground?

A. He said he *knowed* by the timber that was marked—he *dident* say that but it seemed to me by the way we was a going that he ought to know something about it. He showed me the birches that was marked and then we went on up a little further and found a beech and we went up a little further and found a cucumber.

Q. How far did you go beyond the cucumber at that time?

A. I went about seventy five or eighty yards or maybe two hundred, I don't remember at this time.

Q. About how long ago was it you were there upon the *accassion* mentioned?

A. It was about five or six years ago.

Contesting defendants move to strike out the testimony of the witness.

And further this deponent saith not.

SINETT JUSTUS.

5 days 8 miles.

page 393.] MORGAN JUSTUS, a witness introduced by the defendant King, after being first duly sworn upon oath testified as follows.

EXAMINED

By Judge Stiles.

Q. State your age, residence and occupation?

A. Age I don't know my age for certain but about thirty two *or* years, I live on the Guesses Fork of Knox Creek and am a farmer.

Q. Do you know where Daniel Justus lives on Race Fork?

A. Yes sir.

Q. How long have you *know* that place and hollow up back from his house?

A. It has been six or seven years.

Q. Did you ever have occasion to examine the timber on the left hand hill side of that hollow and if so about when and how did you come to be doing so?

A. I did sir. It has been a right smart b.. back it has been six or seven years ago. I went there me and another gentleman —John Justus, for to work some for Daniel Justus—clearing of some ground. We looked at the timber looking over the ground, and while we were looking at it by the acre we were to leave so many trees to the acre, we were to take it by the acre, we looked over the ground and timber and while we was a looking he got us to look for a line tree and corner trees. Well we hunted a good deal and we found a beech marked and a cucumber, that is all we found marked.

Q. Do you know what line it was he wanted you to look for or that you did look for?

A. Daniel said it was a line of the Lonheart survey.

Q. How far up that hill side and up, the drain did your examination of the timber extend?

A. Well sir we looked over some two or three acres of timber, and land.

Q. Do you know where there are a couple of poplar stumps in there that have been talked of lately as stumps of marked poplars?

A. I know where they are, where they claimed

page 394.] to be marked.

Q. Were those poplars standing at the time you were looking over the timber?

A. Yes sir.

Q. Were you near them at that time and if so how near?

A. I was I was up right at them and around them, them and others.

Q. Have you been about those stumps lately *withing* a few months?

A. Yes sir.

Q. Do you remember a small *sogar* tree stump some distance above one of the poplar stumps?

A. I don't remember of *ara* one right plumb up at the stumps, I remember of stumps near about there is plenty of them there.

Q. Did you ever have any talk or make any statement about marked trees up in that hollow to Mr. Campbell or Mr. Sheppard or any of the persons employed by or representing them?

A. Yes sir I did.

Q. When and where was that and how came you to talk about them?

A. The first talk I had with them was at Grundy in Buchannan County Virginia. I don't remember that I made the statement to them there. I was talking with them about it. I was talking with them at Daniels house again but don't remember whether they took my statement there or at Grundy.

Q. What did you tell them about the stumps?

Q. I told them that I *seed* the stumps, the trees and stumps and that I *seed* the corners on the trees.

Q. Had you in fact seen any corner marks on the trees?

A. I *hadent* sir seen none.

Q. How did you come to tell them you had?

A. Why Daniel Justus got me to tell them. Daniel said that he wanted me to *extimate* the trees to them that they was a working to try to knock the Wilders down.

page 395.] Q. When did you have any other conversation, if

any, with any of the persons referred to about these trees, go on and tell about it.

A. I *couldent* tell you the time, out side of them two times I dont remember of having any further talk with them about it, except at Welch. I told Mr. Campbell and Sheppard that the statement that I had told them that I *couldent* testify to it.

Q. Did you go to them *volunterily* or did they come to you?

A. I went to them I taken Mr. Campbell to one side and Mr. Sheppard stepped up as well as I remember and I told them that I *couldent* testify to the statement that I had *give* them.

Q. How did you happen to be at Welch, who had you come there if any one?

A. John B. Justus and Harve Coleman were the men that got me to go up there.

Q. Did they tell you what was wanted with you there?

A. They told me that they might need me in the purpose of the stump question and wanted me to go up there with them. I told John B. Justus before I went up there that I *couldent* testify to the stumps and he said for me to go on any how, that is all I know about it at this time.

Q. Where were you when you told John B. Justus and Harve Coleman that you couldent testify to these trees?

A. I was at Panther when I told John B. Justus.

Q. Who is Harve Coleman and John B. Justus?

A. They live on Knox Creek and claim land there.

Q. Did you have any understanding with Daniel when he first came to you about these trees as to whether you would be called upon to testify concerning them?

A. Yes sir. He said that I *shouldent* be sworn on this if I would give the statement

Q. Did Daniel Justus at any time last fall or winter come to get a block out of a marked tree to be used in con-

page 396.] nection with the *supposes* corner back of his house?

A. I dont remember it was last fall or winter it might have been a little time behind that, I was at his house when

this was mentioned between us, at the first time. He wanted us to get some blocks out of as old a corner tree as we could--out of a poplar that had hacks on it and a sugar tree block that had hacks on it We didn't find them—or any that was old enough that we thought would do.

Q. Tell as nearly as you can when it was you had this talk?

A. It might have been a year ago and it might not have been, *I* it has come into my mind that I do now by us a feeding some green corn to our horses, as well as I remember by us a getting the green corn it was in the last of August or the 1st. of September I think it was this summer past a year ago, if I aint mistaken about it.

Q. Are you a brother of Daniel Justus?

A. Yes sir—pass for it.

Contesting defendants object to each and all of the foregoing questions and move to strike out each and all of the answers thereto.

CROSS EXAMINATION.

By Mr. Sheppard.

Q. You saw Campbell and me at Grundy at the August term of the County Court 1901 and told us you had seen the old corner trees in the branch at Dan's did you?

A. I dont remember whether it was at the August term or not but I saw you there all right. I told you that I had *sen* the corners

Q. We asked you there at Grundy if you would meet us on the following day at Dan's house to see if you could point out the stumps of the trees?

A. I think very likely you did, I can remember and I *couldent* give you a true statement as to that

page 397.] Q. You did meet us at Daniel Justus house did you?

A. Yes sir.

Q. While there you went up to these poplar stumps and *shwood* them to us and told us you had seen them marked as corner trees when they were standing and showed us how they were marked, is that the fact?

A. Yes sir I think it is.

Q. While you were there and in the presence of C. W. Campbell and others I wrote down the statement in my book and read it over to you and you approved it, is that not the fact?

A. Yes sir.

Q. I now read that statement and ask you if it is not the statement you made: "Morgan Justus, Jr. I am thirty one years old, live on Quess *Frok* of Knox Creek. About ten or eleven years ago I was over at my brother Daniels, on Race Fork of Knox to have a coon hunt with him. We went up *race* fork and hunted all night. next morning we came back down the branch where Daniel Justus now lives and when a short distance *form* the mouth of the branch (up in the branch) he called my attention to some marked trees standing just above us to our right as we come down the branch. They were I think about one hundred yards from where Daniels house now is. I did not go to the trees but came near by them. I remember that there was two poplars, a sugar snag and a lynn. I saw three marks each on the side of the tree next to the branch. I did not look at the other side of the trees. I *rmember* that the marks looked very old and seemed to have been made with a small ax." Is that the statement you made to me?

A. I suppose it is sir.

Q. You never told any of us anything different from that statement until after your brother Daniel had been to Charleston and returned, did you?

A. No sir I *dident*.

Further answer by the witness to the last question:
page 398.] I *dident* know when he went to Charleston, I heard of his going though I disremember the time I did hear of his going, it aint been very long back, I don't know whether it was before I was at Welch or after

Q. You told Mr. Campbell and me on the steps of the court at Welch, next to the depot that you knew nothing about these poplars trees and *couldent* testify anything about it?

A. Yes sir.

Q. That was the time that Mr. Graham, the Commissioner here, was taking depositions in this case at Welch, was it?

A. I suppose it was

Q. Your brother Daniel was there at that time in consultation with King's counsel was he not?

A. I *couldent* tell you that sir.

Q. You do know that he was there at that time?

A. On the same trip I got with him there, at the time I told you I *dident* know that Dan was there.

Q. How far do you live from Dan?

A. It must be some twelve or fourteen miles.

Q. Your brother Daniel came here with you on this trip also did he not?

A. We come in here together yes sir, got with one another on the railroad line.

Q. Were you *sommoned* here as a witness?

A. No sir I *wasent sommoned?*

Q. How did you *haaper* to come?

A. Right at the time I started here Daniel sent for me to come over and come down here with him.

Q. Daniel is still here is he?

A. Yes sir.

Q. All the Justuses who have testified here for Mr. King are either brothers or cousins of Dan are they not?

page 399.] A. I *couldent* tell you that, they are all related as either brothers or cousins of Dan. His son and wife and daughter also I suppose testified.

Q. Did C. W. Campbell, C. L. Gaujot and me authorize or direct you to hunt up any blocks from any trees that had marks on them

A. No sir.

Q. And you never intimated such a thing to us or in our presence until you came on the witness stand here to day did you?

A. I never did sir.

RE DIRECT EXAMINATION.

Q. How many times did you see Mr. Campbell or Mr. Sheppard after you made the statement to them at Dan Justuses and before you saw them at Welch?

A. I saw Mr. Sheppard at Panther which is the only time I saw him from the time I saw him at Dans until I saw him at Welch. If I saw Campbell from the time I saw him at Dans to the time I got to Welch I dont remember it.

Q. Why did you go to Mr. Campbell and Sheppard at Welch and tell them you *couldent* testify to the trees?

Objected to by contesting defendants.

A. John B. Justus told me at Panther that they expecting to call me on the witness stand up there for to testify to the statement I give to Mr. Sheppard and Campbell and I thought that I would tell them that I couldent swear to the corners before I got on the witness stand, that it was fixed up with me and Daniel

Q. That what was fixed up between you and Daniel?

A. That is about the corners that Daniel got me to tell this to them. I was a looking for them to call me on the witness stand and I thought I would tell then and when they heard this they would not want to use me as a witness.

Q. What was it that was fixed up with Daniel was it the statement about the trees, or that you were to tell Mr. Campbell that you could not testify?

page 400.] A. It was the statement about the trees and I thought I would explain it to Campbell and Sheppard and they would not want to put me on the stand.

Q. Were you waiting at Welch a day or two before Campbell and Mr. Sheppard arrived?

A. Yes sir I suppose I was,

Q. And you got there a day or two before Daniel got there?

Objected to by contesting defendants.

A. I had been there some time but dont remember the time I had been there, before I *seed* Daniel.

RE CROSS EXAMINATION.

Q. You saw me at Panther before you went to Welch did you not?

A. Yes sir.

Q. And on the same trip that you went to Welch?

A. Yes sir.

Q. I went there and met you and a lot of other witnesses, we had *had* brought out of Knox Creek and were taking to Welch to give evidence in this case, *isent* that the fact?

A. I dont *rmember* what case *what case* that they named to me they wanted us in but it was between King and the people, but I dont remember what they wanted us in outside of the corners.

Q. And I talked with you there at Panther and you did not tell me at that time that you could not testify to seeing corner trees

A. Not at Panther I *dident*, if we ever mentioned it I dont remember.

Q. Do you *menan* that you did not talk to me at Panther?

A. I talked with you just common talk of course—but not about this suit

Q. *You* brother Dan had not got to Panther at the time we were there together, had he?

A. No sir, not that I *seed*.

page 401.] Q. Dan got to Welch on the same train and on the same morning that Campbell and I got there, *isent* that the fact?

A. I *couldent* tell you that sir, I *dident* see him get off and *dident* know that he was on the train.

Q. You saw him there the same morning that you first saw us, did you not?

A. I dont remember whether I did or not but any how I seen him on my trip there.

RE DIRECT EXAMINATION.

Q. You say you told John B. Justus at Panther when he told

you you would be called as a witness that you *couldent* testify in this case, was that about the time you saw Mr. Sheppard or was it before or after?

A. As well as I remember it was after Mr. Sheppard had left there and we stayed over a spell at Panther.

Q. Did Mr. Sheppard tell you at that time that he was going to want you at Welch?

A. We was expecting to get on the train that morning and go to Welch and when the train run up Mr. Sheppard got off and as we got in I think he *caled* us down to see us, that the commissioner *couldent* be at Welch and for us to wait till a certain day and we stayed over there till the next up train and went to Welch. That was on the same day

And further this deponent saith not.

his
MORGAN x JUSTUS.
mrk.

Counsel for Mr. King states that as certain of the evidence heretofore introduced tends or seems to tend to connect Mr. Sheppard, Mr. Campbell and Mr. Gaujot, the representatives of the Kountze Brothers with Harve Charles, who seems to be the author of an attempt to establish a fictitious corner on Race Fork, through the instrumentality of Daniel Justus, counsel for Mr. King will introduce no further evidence along that line nor any further evidence relating to such pretended corner other than the evidence of Samuel Graham until the contesting defendants shall have had an opportunity to call Mr. Charles or *intruduce* such other evidence for the purpose of disconnecting themselves with the procurement of such fictitious corner as they may see fit.

page 402.] Counsel for contesting defendants in response state that they are advised that the representatives of the defendant King have made some kind of *bragain* with H. H. Charles and have obtained a written statement from him of what he told them of his connec-

tion with finding the corner at Dan Justus and that in consideration *therefore* the defendant King by his representatives have released by a paper writing all of the lands and timber owned or claimed by the said Charles. Under which circumstances it is proper that that witness should be produced by defendant King if he desires him. Counsel further states that at the proper time Campbell, Gaujot and Sheppard will all testify in this case, touching the matter referred to, of which counsel for defendant King may now take notice.

page 403.] By consent and agreement these proceedings are resumed at Wayne, Wayne County, West Virginia, on this the 9th. day of October 1902.

PRESENT: The same attorneys as heretofore.

W. W. BALDWIN, a witness introduced by the defendant H. C. King, after being first duly sworn upon oath testified as follows:

EXAMINED

By Judge Stiles.

Q. State *your* age, residence and occupation?

A. Age 42 years, I reside on Big Prater Creek in Buchannan County, Virginia, and am a surveyor.

Q. How long have you been engaged in surveying?

A. For about twenty-two years off and on, I have followed it for an occupation for about five years.

Q. What official position if any, do you hold?

A. I am County Surveyor of *Buchanan* County.

Q. Are you acquainted with Knox Creek and its waters? and have you done any surveying in that neighborhood?

A. Yes sir I have been most all over the creek and I have done some surveying on Knox Creek.

Q. How long have you ben acquainted with Race Fork of Knox Creek?

A. I have knew where Race Fork was for twenty years.

Q. Have you ever done any surveying on Race Fork, and if so what?

A. Yes sir I have done some surveying on Race Fork. I run one of a 3645 acre survey in the name of R. D. Coleman.

Q. Where does that line run?

A. I commenced up on the Race Fork near the forks and run up the right hand fork to a survey in the name of Uriah Estep.

Q. Did you do any surveying or make any search for a corner or other marked trees in the neighborhood of where Dan Justus now lives?

A. Yes sir there was a double lynn called for in the R. D. Coleman survey, I did not find the double lynn.

page 404.] Q. Where was the lynn supposed to stand, or where did you look for it and what search did you make?

A. As well as I remember the lynn should have stood near where Daniel Justus lives, I made a considerable search for it. I searched I reckon from where the poles gave out 50 yards on each side each way and supposing that the poles was more than called for, that is were more than the distance called for I run on and still searched

Q. What point or corner did you run from towards the lynn if you remember?

A. I do not remember the degree or distance at this time. I started on the left hand side as you go up Race Fork and crossed Race Fork and cornered a time or two before the lynn was called for.

Q. I mean the last corner that you ran from towards the lynn?

A. I dont remember now the last corner, we never hit *nara* corner exactly, we had to search for them all.

Q. *Wheare* was the search for the lynn made with reference to the drain or hollow back of Dan Justus house?

A. As well as I remember it was near that drain, it was on the right hand side as you go up the branch.

Q. By the branch do you mean the Race Fork?

A. Yes sir.

Q. Was the land in the neighborhood of the lynn or where you

looked for it then cleared and was any one living there at that time?

A. No sir there *wasent* any improvement there, *nos* sir there was no one living there.

Q. Have you been at that place since then?

A. Yes sir I have been there twice since Daniel Justus lived there.

Q. Did you find the Coleman Corner near the mouth of that hollow that *calles* for two beeches, a white oak and hickory?

A. As well as I remember we found all of the corners but the lynn, that was called for up that fork.

page 405.] Q. The corner called for in the *Coelman* survey next to the two beeches, white oak and hickory is called a triple lynn in that survey, is that the one you refer to when you speak of a double lynn?

A. Yes sir, I should have said a triple lynn in the first place.

Q. Did you run out the full distance called for from the two birches, white oak and hickory, towards the triple lynn?

A. I do not remember whether it was two birches, white oak and hickory but we run out the distance and then made a search for the lynn and then hunted back and then run some further and hunted.

Q. In running for the triple lynn did you run up or down the Dan Justus hollow?

A. I do not remember at this time—it strikes me that we run around the hill side but I wont state that positive.

Q. Do you mean that you ran from the creek or the corner at the creek up the hill side towards the triple lynn?

A. Yes sir it strikes me that we run around the hill side up the creek.

Q. Did you make any search for line trees or other marked timber on the line from the corner near the mouth of the drain towards the triple lynn?

A. Yes sir we looked for line trees from the time we commenced until we quit.

Q. Did you find any marked timber—any marked poplars or sugar trees along that hill side or in the hollow where Dan Justus now lives?

A. None that I remember of.

Q. Who, if any one was with you at that time assisting in making the survey?

A. My brother—S. A. D. Baldwin and J. C. McCoy was with me.

Q. About when was this surveying done?

A. I do not remember the exact date but it has been from eight to ten years is the best of my recollection.

Q. Did you find any marked poplar corner trees any where up that portion of this fork?

A. As well as I remember we found a poplar corner *corner* tree,

a corner of the Uriah Estep survey and also a corner

page 406.] of the said R. D. Coleman survey.

Q. For whom were you doing this surveying?

A. I was surveying at the instance of George W. Harmon.

Q. What interest, if you know had he in having this survey made?

A. Harmon had bought a tract of land for back taxes and the same land called for the Coleman survey and also the Uriah Estep survey.

Q. Are you one of the defendants named in the action of ejectment in the United States Circuit Court for the Western District of Virginia, entitled Henry C. King against Joshua Justus and others for the recovery of the Morris 500,000 acre grant?

A. I reckon I am. Process was served on me.

Q. McCoy and your brother S. A. D. Baldwin were also parties to the same suit were they not?

A. Yes sir.

CROSS EXAMINATION.

By Mr. Campbell.

Q. Running the line for the *Coelman* survey as stated by you

did you always run on the course called for with *hat* you considered the proper variation?

A. Yes sir.

Q. Did you run forward all the time or did you at any time time reverse the course and run back on the distance?

A. Some times where there was a lost corner I would go on to the next corner and reverse the lines and cross them, and where the lines crossed I always pronounced that the corner.

And further this deponent saith not.

W. W. BALDWIN.

2 days and 234 miles.

S. A. D. BALDWIN, a witness *intruduced* by the
page 407.] defendant King after being first duly sworn upon oath testified as follows:

EXAMINED
By Judge Stiles.

Q. State your age, residence and occupation?

A. Age 54 years, I reside at Grundy in Buchannan County Virginia and *and* am the Jailor of Buchannan County.

Q. What was your occupation or profession before you became Jailor of Buchannan County?

A. I follows surveying.

Q. Are you acquainted with Knox Creek and its various branches?

A. Yes sir.

Q. For how long a time?

A. About twelve years. I lived on the Creek that length of time.

Q. How far from Race Fork?

A. A portion of the time about six miles and another portion about three miles.

Q. Do you know where Dan Justus lives?

A. Yes sir.

Q. Did you ever do any surveying of any land in that neighborhood?

A. Yes sir.

Q. Upon how many different occasions?

A. Three that I recollect of.

Q. When did you first do any surveying there and how long after did you do the other surveying?

A. It has been eight or ten years I reckon and I surveyed again about three years after that.

Q. Who was with you the first time?

A. John C. McCoy and W. W. Baldwin is all that I can recollect of. I dont think there was any body else along.

Q. What surveying did you do in the immediate neighborhood of where Dan Justus now lives? particularly about the hollow or drain or the hill sides thereof at the mouth of which Justus now lives?

A. The first surveying that I done, me and him
page 408.] was together we were running a survey patented to Charles A. Lohnart, of 800 acres I think

Q. At whose instance were you doing this work?

A. George W. Harmon.

Q. Where did you run from when you left Race Fork on the line of the Lohnart tract and what corner did you run towards?

A. We started from a beech and hickory on Race Fork below Dan Justus and run to a black gum and a dogwood and from the black gum and dog wood we run to a triple lynn and then to a white oak hickory and birch.

Q. Where does the white oak, hickory and birch stand?

A. On the south bank of Race Fork or near there, not far from Dan Justus house.

Q. Did you have any trouble in locating those lines or corners?

A. We had trouble in finding the corners— the distance gave out before we reached the corners if I *aint* mistaken.

Q. How much search for corners and marked trees of any kind did you make *make* for the triple lynn and between the place and that was called for and the birch, white oak and hickory?

A. I searched pretty near everything in and *aroundt* that hollow there and on the point towards the triple lynn.

Q. Did the others who were with you join in the search for marked timber?

A. Yes they all joined in the search for them

Q. How long a time did you spend in searching for marked timber on that line?

A. I *couldent* tell you exactly—we might have been a hour and might not have been so long?

Q. For whom did you next run lines in that same place and who was with you?

A. For a man by the name of E. S. Pleasant—I believe that is his initials Old man Pleasants and John W. Justus and George Charles, I believe were along

Q. Did you and the men who were with you at
page 409.] that time make any search along the hill side of the Dan Justus hollow for corner trees or other marked timber?

A. We made a search up above Daniels—trying to find a white walnut corner

Q. I mean along from the creek up towards the triple lynn did you make any search there at that time?

A. Yes I searched for this walnut corner.

Q. Did you run the line or try to run it between the triple lynns and the *bbirch,* white oak and hickory?

A. I did

Q. Did you search for marked timber along that line at that time?

A. In running a line we always kept a watch for marked timber.

Q. Did you find the triple lynn at that time?

A. I found what I supposed to be the stumps of the lynn at that time.

Q. At what other time did you do any surveying or look for any marked timber in that hollow or where Dan Justus lives or on the hill sides of that hollow?

A. The last time I run it—me and John C. McCoy, we supposed there was some unappropriated land in there at that time—we *dident* hunt any then for marked timber at that time.

Q. You knew where all the corners were?

A. Yes sir.

Q. Did you at any of the times when you were running lines and searching for marked timber up the hollow or drain where Dan Justus now lives or at any other time find any poplars or sugar trees at that place marked as corner trees, or did those who were with you?

A. No sir I did not—not there I did not at that place, I found a poplar corner up the creek further, a corner of this here Estep survey

Q. Are you the same S. A. D. Baldwin who is one of the defendants in the case of Henry C. King against Joshua Justus brought in the United States Circuit Court *ffor* the Western District of Virginia for the recovery of the Morris 500,000 acre grant, which was tried in 1899 as to J. M. Watkins S. A.

page 410.] D. Baldwin and Eli Hurley?

A. Yes sir.

Q. How long have you been engaged in surveying?

A. Twenty-five years.

CROSS-EXAMINATION.

By Mr. Campbell.

Q. What kind of corner were you searching for in the hollow at Dan Justus?

A. I was searching for a triple lynn.

Q. How far to the right or left of the line you were *tunning* did you search?

A. I *couldent* tell you that exactly but we searched considerable distance from the line, I generally do, some times there is mistakes made.

Q. About how wide a swath did you cover in that search—to the right or left.

A. I *couldent* tell about that.

Q. How far beyond the point where your distance gave out in

running from the dog wood and black gum to the lynn corner did you continue the search for the triple lynn on that course?

A. I *couldent* tell you exactly now—I think we found the triple lynn the first time we run it

Q. How far about according to your best impression was the triple lynn beyond the point where your distance gave out—that is on the line from the black gum and dog wood to the triple lynn?

A. It might have been six, eight or ten poles I dont recollect

RE-DIRECT EXAMINATION.

Q. In the search for marked timber between the mouth of the Dan Justus hollow and where the triple lynn was called for did you examine all the lynns that you found within sight of that line?

page 411.] Objected to by contesting defendants, as being matter in chief.

A. I *couldent* answer that I examined most of the lynn timber that was within a reasonable distance of the line.

Q. In running those lines did you use horizontal or surface measurement.

A. Surface measurement.

And further this deponeth saith not.

S. A. D. BALDWIN.

2 days and 216 miles.

page 412.] Met *th9s* the 13th. day of October at *Will8a,son*, Mingo County, West Virginia, by consent and agreement between the parties

Present. Same attorneys as heretofore.

EZEKIAL CANTERBURY, a witness introduced by the defendant H. C. King, after being first duly sworn upon oath testified as follows:

EXAMINED

By Judge Stiles.

Q. State your age, residence and occupation?

A. Age I am growing on 72 years, I live on the Laurel Fork of Pigeon Creek in Mingo County and am a farmer.

Q. How long have you lived in Mingo and Logan or what was Logan County?

A. I guess about 50 years and may be more.

Q. What part of Logan County have you lived in?

A. I have lived on the waters of Pigeon Creek pretty near all the time

Q. Are you acquainted with Island Creek and how long have you been acquainted with it?

A. I have been acquainted with it about 35 years may be longer.

Q. Did you in your earlier *acquaintence* with Island Creek know any of the old citizens living in its neighborhood?

A. Yes sir I did, some of them I knew.

Q. Did you ever hear any talk among them to the effect that Island Creek had or was reputed to have had some other name in early days?

Objected to by the contesting defendants.

A. Yes sir.

Q. You may state what you have heard upon that subject and when and where and from whom?

A. I *couldent* tell you point blank the time as it has been a good while ago, there was three old men a setting on this side of the river—I had been over to Logan *Court* House and I come across, and they was there talking and one of them said "wait a minute and I will go out with you" and they was a talking about the names of the creeks and William A. Dinges he was an old man like, he said "At one time this creek was called Gilberts Creek"

Q. What creek did he refer to?

page 413.] A. Island Creek.

Q. *Whare* did he live at that time if you know—that is Dingess?

A. He lived on what is called Twelve Pole in Logan County.

Q. Had he at one time lived near Logan Court House?

A. Yes sir he lived over in Logan for a while.

Q. Who were the other men that were present if you remember?

A. James Mead and James Bailey.

Q. Where did they live at that time if you know?

A. On what is called Marrow Bone Creek, it was in Logan then.

Q. Did they or either of them dispute or contradict *Dingesses* statement?

A. No sir.

Q. How did you happen to be there at that time?

AL Well sir as nigh as I can tell you I went over to get some coffee at Logan Court House and was coming back.

Q. *Woere* you living at that place?

A. No sir I was living at what is called the Laurel Fork of Pigeon at that time—my father was and I was living with him.

Q. Can you fix the date of this occurrence with reference to the civil war?

A. As well as I recollect it was before the war just a short time before the war.

Q. Do you know *aht Will9am* A. *Dingesses* occupation was?

A. I think it was that of a farmer mostly?

Q. Do you know whether he was a surveyor?

A. Yes sir part of the time it was.

Q. Was he talking with you at this time or with the other two men?

A. He was talking with the other two men.

Q. How far were you at Island Creek at that time?

A. We were right at Island Creek at the time, we *wasent* in the water but were right on the bank of the creek.

Contesting defendant move to strike out all of the foregoing evidence of the witness.

page 414.] And further this *deponeth* saith not.

1 day and 60 miles.

his

EZEEKEL X CANTERBURY.

mark

It is ordered that these proceedings be now ad-

page 415.] journed to Welch, McDowell County, West Virginia, to meet Tuesday October 14th. 1902

J. T. GRAHAM,
Commissioner.

Met this the 14th. day of October 1902 at Welch McDowell County West Virginia, pursuant to adjournment on yesterday.

Present: Counsel for the contesting defendants and counsel for the defendant H. C. King, as heretofore.

GEORGE W. MORGAN, a witness introduced by the defendant H. C. King, after being first duly sworn upon oath testified as follows:—

EXAMINED
By Judge Stiles.

Q. State your age, residence and occupation?

A. Age 47 years, I reside on Indian Creek in Wyoming County, West Virginia and am a farmer.

Q. How long have you lived in Wyoming County?

A. I was born and raised in Wyoming County.

Q. Have you been acquainted with any of the old people of Logan County, or any of the old people of Wyoming County who had previously lived in Logan County?

A. Yes sir.

Q. Did you ever hear any of them speak of the early settlements and their early *acquaintence* with Logan County, particularly that portion of it along on Tug River?

A. Yes sir.

Q. Did you ever hear any of them speak of Thacker Creek on Tug River as having been known at any time by a different name? Objected to by contesting defendants.

A. Yes sir.

Q. You may state by what name it was said by them to have been known in earlier days?

Objected to by contesting defendants.

A. Turkey Creek

Q. How long ago did you first hear it so said as Turkey Creek

A. Well sir I think it has been eighteen or twenty

page 416.] years ago since I heard them talk it.

Q. Whom did you hear speak of this matter?

A. Mr. Andrew Hatfield

Q. Is he now living?

A. No sir he is dead.

Q. How long ago did he die to the best of your knowledge?

A. It has been ten or eleven years ago.

Q. How old a man was he at the time of his death?

A. I suppose he was close to eighty years old.

Q. Where had he lived in his earlier life if you know?

A. He lived down on Tug River, I think he lived near Ben Creek

Q. How did he happen to be speaking of the creek?

A. He was a telling me about his hunting and where he would kill game and he was telling me one day, he says "I killed three bears one day on Turkey Creek," and he says, "now that goes by the name of Thacker Creek." He says "I never heard it called anything else but Turkey Creek in my early days."

Contesting defendants move to strike out all of the evidence of the witness.

CROSS EXAMINATION

By Mr. Campbell.

Q. Do you know of your own knowledge that the said Andrew Hatfield lived on Tug River near the mouth of Ben Creek in his early life?

A. I dont know it only he said he lived there before he moved to my country.

Q. You simply know it by hear say do you?

A. Yes sir.

Q. When did he move to your country?

A. It has been I expect about thirty-five years ago I think, if I am not mistaken.

Q. When did he say that Turkey Creek changed its name to Thacker Creek?

A. He told me that he had heard that it had changed its name.

page 417.] Q. When did he hear that it had changed its name?

A. He never told me when he heard it.

Q. Did you understand from him that the creek was still called Turkey at the day he killed the three bears?

A. Yes sir.

Q. Was he a grown man at the time he killed the three bears.

A. He never told me whether he was a grown man or not.

Q. How long had it been since he had killed the three bears when he was telling you about it?

A. He never said how long it had been at all.

Q. Was it before or after the Civil War?

A. It was after

Q. Have you ever lived any where out of Wyoming County?

A. No sir.

Q. How far up Indian Creek have you lived above the mouth?

A. Three miles.

Q. Lived there all your life?

A. Yes sir.

RE-DIRECT EXAMINATION.

Q. Do you know who are any of the sons of Andrew Hatfield?

A. Yes sir. James Hatfield, George Hatfield, Loranza Hatfield and Humphrey Hatfield.

Q. Do you mean that it was after the war that Hatfield killed the bears or after the war that he was speaking about it?

A. It was after the war that he was speaking about it.

Q. How far did you live from him?

A. About one mile

Q. How close did your land come to his or his to yours?

A. Our farms joined.

And further this deponeth saith not.

1 day and 40 miles.

G. W. MORGAN,

LAFAYETTE JUSTUS, a witness introduced by

page 418.] the after being first duly sworn upon oath testified as follows:

EXAMINED

By Judge Stiles.

Q. State your age, residence and occupation?

A. I reckon I will be 23 years old the 12th. day of next May, I live in Webster County, West Virginia and my business is farming.

Q. Do you know where Daniel Justus lives on the Race Fork of Knox Creek in Buchannan County Virginia?

A. Yes sir.

Q. What relation to him are you if any?

A. We are said to be brothers.

Q. When were you there last prior to a few days past?

A. Well sir I was there in the last of August or the first of September one or the other, last year.

Q. Have you ever seen two poplar stumps that have been claimed by some of the parties to this suit to be stumps of marked corner trees up on the hill side of the hollow back of Dan *Justuses* house?

A. Yes sir.

Q. Did you ever see the tree while they were standing?

A. Yes sir.

Q. Who were present at the time you saw the stumps, state the facts concerning the same?

A. Daniel Justus and Gaujot at one time I know. There was other parties there, they told me their names but I have forgot—Sheppard was one man I believe they called him. I had been off a good while from there—it was a section I had been raised in, and come back on a visit to see my brother and other connection and they was running lines there—Gaujot and Sheppard at the time I went in and I walked up and stood around with them where they were at and some of them made mention some way or another about there being some corners there on two poplars and a lynn and I told them that there was not no such as that there as I

had hunted the lynn for a triple lynn corner that they said was there for my brother at *differferent* times,. I told them
page 419.] that I had hunted the lynn over and over time and again and the *polar* I had split up into stable logs—the upper one and I had chipped it for house logs—shot at it different times.

Q. How long were you there at that time?

A. Well sir I was there something like two days and two nights. I went in about twelve one day and stayed over night and over the next *day* night and to something like twelve the next day.

Q. Was that the first time you had ever heard those trees or stumps spoken of as having been corner trees?

A. Yes sir.

Q. Have you been away from that country ever since until right recently?

A. Yes sir—ever since until I came in last Friday evening, I *havent* been to Daniels since that time. I have not been back in Buchannan County until last Friday, I have been at my fathers since I came back.

Q. When did you first notice those two poplar trees and the lynn? How did you happen to pay any attention to them?

A. Well sir the lynn, my brother wanted me to hunt a triple lynn corner for him on account of clearing some ground as he *dident* know where to clear at and that is how *come* me to notice the lynn. The poplar he wanted me and Adam Justus to build him a house and we kind of took a contract for it and we chipped the poplar to see if it would split to make house logs. We chipped it and then give out the notion.

Q. Did you cut or help cut down the poplar trees or either of them?

A. No sir I did not cut down or help cut down either of them, some one else cut them down.

Q. Did you have anything to do with either of the trees after they were cut down?

A. Yes sir, the upper poplar I *holped* split it up into stable logs and rails.

Q. Did you at any time see any corner marks on either of the poplars?

A. No sir I did not.

page 420.] Q. Did you split up the but log of the upper—the log that came off the stump?

A. Yes sir, I *holped* do it.

Q. Was there any mark or marks inside of the log or any seam or defect to indicate that the tree had been marked as a corner.

A. No sir.

Q. Was there any sugar tree standing within a few feet of the l nn when the lynn was standing?

A. No sir I never seen *nara* a one any ways close, that ever I paid any attention to.

Q. What examination did you ever make of the lower poplar tree, were you ever close to it?

A. I have been close to it but I never made no examination of it that was worth anything, it looked like it was twisted and *dident* look like it would split and I *dident* examine it anyways close.

Q. Were you close to the upper poplar more than once?

A. Yes sir.

Q. How many times have you been near enough to observe corner marks on it if there had been any?

A. Well sir I *couldent* say I have been there at different times though

Q. Do you know how corner trees are marked?

A. Yes sir. I have seen a good many.

CRESS EXAMINATION.

By Mr. Campbell.

Q. When did you move to Webster County?

A. Last April was two years ago.

Q. Are you married or single.

A. I am married.

Q. Were you married before you moved to Webster?

A. Yes sir.

Q. When did you come back from Webster?

A. I landed in Virginia last Friday evening.

page 421.] Q. Who came with you if any one?

A. One of my cousins—John B. Justuses boy —Randolph Justus.

Q. Does he live in Webster?

A. No sir he lives in Virginia and went out with me last fall when I was out here and came back with me this fall.

Q. Where does your father live?

A. In Virginia in Buchannan County.

Q. On what creek?

A. On Laurel Creek, that empties into Knox.

Q. Above or below the mouth of Paw-Paw?

A. It is above.

Q. Is it above the mouth of Guess Fork

A. Yes sir.

Q. Does he live within the boundary of land claimed by Henry C. King?

A. Yes sir.

Q. Have you seen your brother Daniel lately?

A. Yes sir I got with him a Sunday.

Q. Where did you get with him Sunday?

A. At Josh Justuses at the mouth of Guesses Fork.

Q. Where did you and him go to from there?

A. To Grayson Stacey's that day.

Q. Did he go with you to Grayson Staceys?

A. Yes sir.

Q. What took you and him to Grayson Stacey's?

A. Well sir we started over to the—we started here at Welch, and came up there and stayed all night.

Q. Did you do any thing while at Staceys?

A. No sir but eat or some thing like that?

Q. What time did you get to Staceys that day?

A. Sometime after noon I *dont* remember exactly just what time.

Q. On what Creek does Grason Stacey live and how far from Jushua Justuses?

page 422.] A. He lives on a/ little creek that they call Cushaw that empties into Guesses fork. He lives not far from four miles from Josh Justus as nigh as I can guess at it.

Q. When did you and Daniel leave Staveys and where did you go to?

A. We left Staceys Monday morning and come over to Alnwick—that is yesterday morning.

Q. Who was at Staceys besides your self and brother?

A. There was several woman and kids and two other men one by the name of Wyatt Justus, George Hall and Wayne Justus my brother.

Q. Did those three men come to Staceys the same day you and Dan did and leave with you the next day?

A. I never seen them until I got there, my other brother Wayne Justus come with us there. They did not leave with us the next day they left before we did.

Q. How did *you* brother Daniel know that you were at Joshua Justuses?

A. He *dident* know that I was there at all until I seen him.

Q. Did Wayne Justus come there with Daniel?

A. No sir he came with me.

Q. Where did you first get with Wayne?

A. At fathers.

Q. Where had you and him started when you went to Jushua Justus?

A. We started here to Welch.

Q. What were you coming to Welch for?

A. Well sir my brother wrote to me that he wanted me here.

Q. Which brother wrote you?

A. Daniel

Q. When did he write you?

A. Something over a month ago, or right near about.

Q. Did he tell you he wanted you to come to Welch West Virginia, to testify?

A. He *dident* tell me exactly he wanted me to come to Welch, after I got there my brother Wayne Justus said

page 423.] that is where he wanted me.

Q. Where did he tell you to come?

Q. Why he wrote and said for me to come out to where he lives there from Webster.

Q. What did he say he wanted of you?

Objected to by defendant King.

A. Well he said they was in some little lawing here and they needed me to give testimony.

Q. Did he say in what case and in what matter he wanted you to give testimony?

A. Yes sir.

Q. What case or matter was it?

A. The King survey matter.

Q. Did you have any conversation with your brother Daniel as to what you would testify when put on the stand?

A. No sir nothing only he *axed* me what I would have to state about the poplar trees and the lynn a being a corner

Q. Who was present when Dan asked you that question?

A. Well sir I *aint* right sure that anybody heard him we was standing on Josh Justus store house porch, close by the door they could have heard him if they had been so minded to listen.

Q. Is Daniel Justus here with you to day?

A. He come here with me to day.

Q. Did Grayson Stacey also come with you.

A. Yes sir.

Q. Did J. N. W. Blankenship also come with you?

A. He come on the train that I come on up here.

Q. Is he here to day with you?

A. Yes sir.

Q. Did you tell any one besides your brother Daniel what you would swear about those poplars and that lynn?

A. No sir, without it was Colonel Wilder there.

page 424.] Q. Did Daniel or any one else tell you about the contract that Daniel has with Henry C. King about giving him some land and some money?

A. No sir.

Q. You have heard nothing about that have you?

A. No sir this is the first.

Q. Did you hear that Daniel had gotten $100.00 or more from Henry C. King?

A. No sir.

Q. Have you heard that Daniel had a contract or agreement of any kind with any body?

A. No sir. You mean in this business?

Q. Yes.

A. No sir.

Q. Did he speak about going to get a home of a hundred or a hundred and fifty acres of land some where on Knox Creek?

A. No sir.

Q. Do you know what he came here for to day?

A. He said. told me that he was coming here to give evidence

Q. Did you understand from him or any one else that Daniel had already testified in the case?

A. No sir.

Q. Did you understand that your brother Wayne had already testified

A. No sir.

Q. Did Daniel Justus tell you about having been to Williamson some time ago with himself and other to give evidence in this case?

A. No sir.

Q. Was nothing more said about this case between you and Daniel or in the presence of you and Daniel by others, except the conversation you referred to Sunday at Joshua Justus store house porch?

A. No sir without some body else would have mentioned it some way or other and I never paid any attention to it or recollect it now.

page 425.] Q. Have you got the letter which was written you by Daniel Justus to come here to testify?

A. No sir not here.

Q. Where did you get with J. N. W. Blankenship and when?

A. At Alnwick on yesterday evening

Q. Did Daniel Justus, since you come over from Webster tell you that your fathers land was to be released out of the King suit?

A. No sir.

Q. Did any body else tell you so?

A. No sir.

Q. Had you heard or understood in any way that your Brother Daniel had arranged that the lands of your father and his people were to be released and let out of the King litigation?

A. No sir.

Q. Do you know surveyor Stone?

A. No sir.

Q. Do you know surveyor Matthews—a large fat man?

A. No sir.

Q. How many persons were presen when you told Mr. Gaujot that those poplar stumps were not marked as corners?

A. I *dont* remember, they was Daniel Justus and three or four other different men was there?

Q. Were they up at the stumps when the conversation occurred?

A. No sir we *wasent* right at the stumps.

Q. Where were you?

A. As well as I recollect we were some thing like fifty yards below them.

Q. What was going on at the time if anything?

A. They were surveying there—the man they call Gaujot.

Q. What were those strangers doing at that time?

A. Surveying, they was there on that business

page 426.] —surveying.

Q. Had they yet commenced to survey at that point?

A. Yes sir they had been surveyng they said a day or so.

Q. When the conversation occurred were they actually surveying or standing around talking?

A. Well sir they was setting their compass and one was up in the hill something like two hundred and fifty yards above us holding up a pole and the other were standing around the compass.

Q. When you had the conversation were you with the flagman or with those around the compass?

A. No sir I was around the compass.

Q. Who was the flagman?

A. I *dont* know him.

Q. Who was setting the compass?

A. He was a stranger to me.

Q. Was he a large or small man?

A. He was something near my size.

Q. Was he a young or old man?

A. He looked to me like he might have been some thirty years old.

Q. Who were the chain carriers at that time?

A. I *dident* know them.

Q. Was there more than one surveyor?

A. I *dident* see but one surveying there might have been two or three I *dident* know.

Q. Was the flagman up about the stumps at that time?

A. Yes sir.

Q. Was the surveyor sighting or running up in that direction?

A. Yes sir he was sighting in that direction.

Q. How many persons were there whom you did not know?

A. Well I disremember

Q. Was the surveyors tent down below your brother Daniels near the sulphur spring at that time?

A. Yes sir it was said to been their camp.

page 427.] Q. Was it in the morning or evening when you had that conversation?

A. I believe it was in the morning as well as I recollect about it.

Q. When was it you was hunting the triple lynn for your brother?

A. About from three to five years ago, at different times in that bounds.

Q. When was the last time you were hunting for the corner?

A. Some thing over three year ago, I *dont* remember what time it was.

Q. Where was your brother Daniel living at that time?

A. On the Race Fork of Knox Creek.

Q. At the place where he now lives?

A. Yes sir.

Q. Was he living there when you made the first search for the triple lynn?

A. Yes sir.

Q. He has been living there ever since has he?

A. Yes sir.

Q. How long had he been living the before he made the first search?

A. I disremember how long.

Q. About how many times as near as you can remember did you make the search for the triple lynn?

A. Well sir four or five *time*, I *cant* say for certain how many, long in that yay.

Q. Did you ever find the triple lynn?

A. No sir not with no corners on it I never found one.

Q. How long would you continue your search each time?

A. I *couldent* tell you every time, one time I knew I hunted from morning till noon.

Q. Were your other searches as long?

A. No sir I *dont* think I hunted *ara* another *times* as long.

Q. Did Daniel Justus get you to make the search each time?

A. Yes sir.

page 428.] Q. Did you inform him that you had failed to find a triple lynn

A. Yes sir.

Q. Did he help you to search any?

A. Some times he did and some times he *didenť?*

Q. Did he help you the last time you made the search about three years ago?

A. I believe that he did, I *aint* so sure but I believe he was with me the last time?

Q. Where was Daniel Justus living at the different times when you were shooting at the poplar tree?

A. On the Race Fork.

Q. Where he now lives?

A. Yes sir.

Q. Did you ever take a shot at the lower poplar?

A. I might have shot in it or shot at some on it but never took no regular match at it.

Q. Do you know whether you ever shot in *ot* at the lower poplar?

A. I think I have.

Q. How many times with what sort of a gun?

A. A rifle gun I always shot with.

Q. Where were you standing when you shot at the poplar tres?

A. On a little knoll something like sixty yards below them.

Q. was it near the corn crib you stood?

A. Yes sir, between the corn crib and them.

Q. How many shots if you remember did you fire into the upper poplar?

A. I *dont* remember.

Q. Was there any person else shooting into it at the same time?

A. My Brother Daniel Justus.

Q. Was not the root of the poplar tree you were shooting at much higher up than you, that is elevated above the point where you were standing?

page 429.] A. Yes sir we was shotting up hill

RE-DIRECT EXAMINATION.

Q. Was the man they called Gaujot near by the compass and near you at the time you told them those trees had not been marked and that there was no such thing as a corner there?

A. Yes sir, near by it.

Q. I understand you left there and went back to Webster County, West Virginia, a day or two after?

A. Yes sir, shortly afterwards.

Q. Have you know or heard anything about this case from that time until within a week or less ago, except the letter from your brother that there was a law suit going on and your testimony was wanted?

Objected to by contesting defendants as leading.

A. I have never heard that they wanted of my testimony before the letter I had heard the case talked about but nothing that I ever paid any attention to about or put it on my mind.

Q. Did you know or had you heard what testimony had been taken in this case?

A. No sir.

Q. You say that Grayson Stacey came over to this place with you did any other Staceys or other persons whom you have not mentioned come at the same time and who are not witnesses?

A. John Stacey came with us. I *dont* know whether he is a witness or not we got with him at his place and come on with him here.

Q. Did A. J. Stacey come along.

A. He got on the train somewhere along the line this morning and come with us.

And further this *deponent* saith not.

his
LAFAYETT x JUSTUS.
mark.

1 day and 92 miles.

page 430.] WAYNE JUSTUS, a witness who had heretofore testified being recalled upon oath testified as follows:

EXAMINED

By Judge Stiles.

Q. Did you testify in this case before the present commissioner at Williamson last May on behalf of the contesting defendants?

A. Yes sir.

Q. Is there any portion of your testimony given at that time that you wish to correct or change?

Contesting defendants object to this witness undertaking to make any change in his evidence because he thoroughly understood the question put to him by the commissioner and thoroughly understood his answers thereto and in the light the conduct of his brother Daniel Justus as shown by the contract and affidavit heretofore filed, the commissioner ought not to permit him to attempt to change his evidence.

A. Yes sir.

Q. What statements and what portion of your testimony do you wish to change or correct?

Objected to by contesting defendants.

A. Why I want to correct the making affidavit to them trees because I was scared into it.

Q. Who first spoke to you with reference to testifying in this case and when and what was said?

A. John B. Justus was the first one. He come to me and asked me if I *wouldent* come and make affidavit to them corners. I told him no sir I *couldent* do it and tell the truth and no one else.

Q. Who is John B. Justus and where does he live?

A. He lives in Buchannon County Virginia.

Q. Is he interested in land on Knox Creek?

A. Yes sir he owns land up there.

Q. Did you go out to testify at that time upon John B. Justus request?

A. No sir.

Q. Who next applied to you to give your testimony, state when that was and what occurred?

page 431.] A. Levi Lester was the next one, it was about two or three days just after that, after Justus spoke to me. He come to me and told me that they had my brother and gone with him and that he thought he would go to the penitentiary with him, that detectives had him and if I *dident* go and testify to them corners that he was aiming for them to come and take me.

Q. What did you say or do at that time?

A. I told him that I would go but it was again my will to do it.

Q. Did the detectives at that time have your brother away some where?

A. They said they did and he was gone I know.

Q. Was Lester at that time engaged in collecting witnesses?

A. I couldent tell you about that only what they said.

Q. Did he take you out to Williamson to testify?

A. Yes sir I went with him and some more.

Q. Who paid your expenses at the time from there out, did he?

A. Well I *couldent* tell you that, which, him or Gaujot done it.

Q. Did you help him cut down any of the trees that you testified about at that time?

A. As well as I remember I *holped* cut one of them trees.

Q. As a matter of fact did you at that time or at any other time see any marks of any kind on the tree that you helped cut or any other trees that were cut at that time that would indicate a corner tree?

Objected to by the contesting defendant and to the witness answering the same in any other way than when he was on the witness

stand in this case in the month of May last in which he stated that he had seen corner marks upon the poplar he helped cut down.

A. No sir I never seen no hacks.

Q. Did you at that time hear anything said about the trees being marked?

A. No sir.

Q. You may state what led you to state upon your previous *examinatin* that the trees were marked?

A. Because I was scared to it.

page 432.] Q. Was any one present when you had this conversation with John B. Justus in regard to testifying in this case?

A. Yes sir there was Bill Baker and Hiram Justus and Elizabeth Justus.

CROSS EXAMINATION.

By Mr. Campbell.

Q. Who was present when Levi Lester had the alleged conversation *witj* you?

A. There was no one by, he come and took me out of a little store house and took me around behind it and was talking to me.

Q. What little store house, where situated?

A. Clel Coleman's store house. At Hurley, in Buchannon County, right at the mouth of Lester Fork.

Q. Where did Levi Lester go to from there and where did you go?

A. I dont know where Levi went I went down to the old man Hiram Halls and stayed all night. The next day we come out to Devon and then that night we went down to Williamson. Hiram Hall went out to Williamson with us.

Q. When you got to Williamson did any lawyer ask you what you knew *what you knew* about the matter and did you tell them?

A. Yes Sheppard, I believe it was Sheppard, he talked to me but I disremember what he said to me now, he asked me something about them corners.

Q. *Dident* you tell him or the lawyer who was asking you the

questions the same thing that you tes ed to before the commissioner immediately after that conversation?

A. Yes sir I guess I did.

Q. Did you make complaint to the commissioner or to the attorneys that you were scared and was being intimidated by any body?

A. You mean down there?

Q. Yes.

A. No sir.

Q. Did you at any time after that inform the commissioner before whom you testified or any of the attorneys en-
page 433. | gaged in the case that your testimony about the corner trees was false and that you had given it because you was *scarred*?

A. Yes sir I gave that testimony to night.

Q. Is that the first time you ever made any complaint about that matter?

A. I may have talked it to some one else, that is just talked it

Q. Was your brother Daniel Justus at Williamson when you gave your testimony?

A. If he was I never saw him down there.

Q. Had you seen Claud Gaujot on Knox Creek the day you came down or the day or two before that?

A. Yes I saw him up there, it was the day we come down I believe.

Q. Had you done any thing yourself for which you might have been arrested and sent to the penitentiary when Levi Lester was talking with you?

Objected to by defendant King.

A. No sir nothing without it was something about going a witness for Wilder, there was some thing said about me going a witness for Wilder and I heard some thing said about Daniel going for Wilder and that is what I heard the detectives took him for.

Q. Had you been saying that you were going to become a witness for Wilder?

A. Yes sir I think I did.

Q. To whom had you said it?

A. Well I disr[illegible]ber now.

Q. Did you u[illegible]erstand that was a penitentiary crime?

A. Yes sir I *dident* know nothing about any law.

Q. Do you say that you were willing to swear falsely to keep your brother out of the penitentiary or yourelf out?

Objected to by defendant King.

A. I believe that would be an unfair question *wouldent* it?

Q. Is *tht* the only answer you wish to make?

A. Why I *wouldent* think a man ought to explain it that way.

page 434.]

Q. When you got to Williamson *dident* you learn that your brother Dan Justus and Reece Davis had gone back home from Williamson?

A. I disremember about that now.

Q. Study a minute?

A. If I heard it down there I dont remember it.

Q. Did you have any *enquiriers* as to what had become of him?

A. I believe I saw Daniel in Devon that evening, that is what I believe about it, he was drunk, I think that I saw him there drunk.

Q. Was his neighbor Reece C. Davis with him or in Devon at the same time.

A. Yes I *seed* Reece there.

Q. They *were* on there way home were they not from Williamson?

A. Well I couldent tell you about that I dident have no talk with them.

Q. Did you see your brother Daniel going about Devon wherever he wanted to?

A. I dont know that I *seed* him going around any or not, I *couldent* say.

Q. No officer or detective had him under arrest did he?

A. No sir I couldent tell you that I *nare seed* one of them.

Q. Did you not think to ask him about his penitentiary trip?

A. No sir I was talking with another fellow and he got away from me some way or me away from him and I dont know what become of him.

Q. How long were you at Devon before you got a train down to Williamson?

A. Well it was about dusk dark when we got in there and that midnight train we went down in it, I dont know what time it went by Devon.

Q. How did you all come from Hurley down to Devon?

A. We rode one of them little engines down.

Q. Is there a tram rail road from Devon up to Hurley near where Daniel Justus lives?

A. It is not very near to his house its in about from three miles and a half to four miles.

Q. Is Devon a station on the Norfolk & Western at which people return from Williamson to Knox Creek would get off the train?

A. Yes sir I have got off there.

page 435.] Q. When you came down to Williamson last May when you returned home to Knox Creek was the tram rail way from Devon up Knox carrying *passenges?*

A. I *couldent* tell you about that, carrying passengers, they *dident* kick on me a riding and I never heard of them kicking on any one else riding on it.

Q. When you were testifying before the commissioner *ij* May *laast* was not all of the witness excluded from the room except the witness testifying?

A. I believe they was.

Q. Who got you to come over here to day to testify?

A. Daniel told me Wilder wanted me.

Q. Who do you mean by Daniel?

A. Daniel Justus.

Q. When did he tell you?

A. He told me a right smart bit ago that Wilders wanted me and I got crippled up and *couldent* come.

Q. Do you mean Colnonel V. A. Wilder, Agent for Henry C. King?

A. I dont know he just said it was Wilder, it is this Wilder I reckon, (Here pointing to Colonel V. A. Wilder who is present.)

Q. Did he tell you what was wanted with you?

A. I think he did, he said they wanted me to come back on the witness stand.

Q. Did he say why they wanted you back on the witness stand?

A. Yes he said I swore false and he wanted me to straighten it.

Q. Did you promise him to do so?

A. Well sir it bore on my mind and if he *hadent* named it to me I was going to straighten it.

Q. You knew then did you that it was wrong to swear falsely?

A. Yes sir I knew that it was not right but I was

page 436.] scared into it.

Q. Where were you living in May 1902?

A. I lived in Buchannon County Virginia, I was staying with my father.

Q. Were you a single man then?

A. No sir.

Q. How old were you?

A. As nigh as I recollect about twenty-two.

Q. You heard about Daniel having a contract with Henry C. King to get *$500.00* in money and the surface interest in a tract of one hundred or a hundred and fifty acres on Knox Creek?

A. No sir I never heard nothing about no such a contract as that.

Q. What did you hear that Daniel had done that the detectives were after him?

A. Because he was going to become a witness for Wilder.

Q. You had heard about his making an affidavit had you?

A. No sir I never heard of his making no affidavit.

Q. *Wasent* it talked of on your way down to Williamson in May last and about Daniel going to Charleston and having made an affidavit contrary to what he had previously stated about the corner?

A. Dont remember now.

Q. Have you not since that time heard about his having made an affidavit in Charleston and having gotten some money with the promise of more, has this not been common talk over the country?

A. No sir I dont know that I ever heard and thing about it any way.

Q. Had you heard that he had went to Charleston with Watkins *Blankenship*?

A. I believe I did hear that he went to Charleston but I never heard nothing about no contract.

Q. What did you understand that you went over there for?

A. Why I dont know that I enquired into it to find out what he did go there for.

Q. Had you heard before you came over here that your brothers Daniel and Morgan and Senett, had recently been to Williamson and testified in substance that they had seen the poplar trees on the left of the little drain coming in near of Daniel's house and that neither of them was marked as a corner?

page 437.]

A. I never heard that Daniel testified to it at no way I heard them other boys testified to them but I dont know what they testified.

Q. Who was telling you about it?

A. Well I disremember that.

Q. What day did your brother Daniel leave Knox Creek for Williamson?

A. Well I *couldent* tell you that I dont remember.

Q. Where were you on Sunday and Monday before you went to Williamson?

A. I dont remember now where I was.

Q. How come you to be at Clel Colemans store on the day before your going to Williamson?

A. Well I went there to buy some grub to eat.

Q. Did you buy it and take it on home that day?

A. No sir.

Q. When did you see Daniel Justus after you returned from Williamson?

A. I *couldent* tell you that it was a little *afte5r* that, Mr. Campbell saw me I told him I was going up that little fork to Daniels.

Q. How long did you stay in Williamson after you finished your deposition?

A. I *couldent* tell you that now I dont remember.

Q. When were you at Daniel Justus house last?

A. It has been about three weeks I guess.

Q. You testified before did you not that the poplar tree that you helped to cut down on the left of the drain above Dan Justus house, was marked as a corner tree?

A. Yes sir I stated that.

Q. Why did you not state on that occasion if you were there to testify falsely that the other poplar tree standing above the one you helped to cut down was also marked as a corner tree?

A. Because Levi told me to and I was afraid not to—to testify no *othes* way.

Q. Did he tell you to confine your testimony to one

page 438.] poplar tree?

A. I dont know that he told me about one but he told me to testify as to both of them.

Q. Why *dident* you testify as to both trees being marked as corners,

A. I did testify that they both was marked before, because I was scared to it.

Q. Do you remember the beech tree that was said to have been marked?

A. Yes sir I remember of a beech tree being marked down back of Daniels house or it looked like it had been old hacks on it.

Q. Did you help cut that tree down?

A. I don't remember right now whether I did or not.

Q. You heard the fact spoken of on that day when you were at the clearing at your brothers that the beech tree was marked as a line tree?

A. I believe I heard something said about that beech tree being marked.

REDIRECT EXAMINATION.

Q. How long before you went out to Williamson to testify was *in* since you had seen your brother Daniel.

A. I dont remember but it was quite a while, a month or over.

Q. Where had you been living up to about that time?

A. I had been living opposite to Matewan on the *Kentuck* side.

Q. About how long before you went to testify did you come back to your fathers?

A. It must have been a week or a little over.

Q. How far does your father live from where Dan lives by the usual course of travel by the way you go from one place to the other?

A. It must be from seven to eight miles.

Q. You spoke of being prevented from going out to correct your testimony by having been hurt what was the nature of the injury and how long ago did it occur?

A. I got hurt up, about a *mie* and a half above Hurley, got my foot crippled. This has been close on three months ago.

Q. Did you make any attempt to come out before coming here?

A. Yes sir.

page 439.] Q. Were you able to come to come and if not why?

A. I *dident* think I was able to get to the rail-road.

Q. Did you have any *acquaintence* with the commissioner or Mr. Campbell *of* Mr. Sheppard before you came to Williamson to testify?

A. No sir I never *seed* either one of them before I went there if I did I do not know it.

Q. Had you ever been witness in any case before that time?

A. No sir I dont think I ever give evidence before.

Q. Are you able to read or write?

A. No sir.

Q. When Mr. John B. Justus and Mr. Lester came to you to get you to go out and testify did you know or understand they or either of them was engaged for Mr. Campbell or Sheppard or their clients in gathering up witnesses about these trees?

A. No sir I knowed nothing about John B. Justus being any agent for these men, but the reports was around there that Levi Lester was.

RE CROSS EXAMINATION.

Q. From whom did you hear the report that Levi Lester was agent?

A. I believe Levi Lester told me himself that he was working for these people.

Q When and where did he tell you that and who was present?

A. He told me that the same time that he took me out behind the house at Clel Colemans.

Q. Was that the first and only time you heard that he was an agent?

A. Yes sir I believe it was.

Q. How *dod* you say it was reported around that he was an agent?

A. I *couldent* inform you that for I dont know.

Q. Did you hear from any body that it was reported around that he was an agent?

page 440.] A. Yes I have heard it from so many I dont know how many now.

Q. Before or after you went to Williamson?

A. Well it was after I come back, only what he told me.

Q What attempt did you make to go out to correct your testimony before you made this trip?

A. Why I started and my *foor* hurt me so I *dident* think I could make the trip.

Q. When did you start and where did you get to?

A. I got down to Mr. Justus right at the mouth of Guesses Fork.

Q. How long did you live on the Tug River opposite to Matewan and what were you doing there?

A. I made that my home off and on for about three years, part of the time I was at work and part of the time I were not.

Q. What different kinds of work did you follow?

A. Well I dug coal and loaded lumber and saw logged some.

Q. For whom did you dig coal?

A. I dug coal *thare* at that lynn I disremember the name

Q. Who was you working for when *your* were saw logging and loading lumber?

A. I was working for my father-in-law when I was saw logging.—Sam Followay.

Q. Were you ever at court at Grundy?

A. Yes sir I have been there at court.

Q. How often have you attended court there?

A. I believe I was there about once.

Q. Had you been at Willamson before you were there to testify in May last?

A. Yes sir I had been there.

Q. How often?

A. Well I had been there, I believe once or twice.

And further this *depinent* saith not.

his
WAYNE X JUSTUS
mark

2 days and 92 miles.

Witness JONAH J. T. GRAHAM, *Com.*

page 441.] SAMUEL JUSTUS, a witness introduced by the defendant H. C. King after first being duly sworn upon oath testified as follows:

EXAMINED
By Judge Stiles.

Q. Did you testify in this case at this town last July on behalf of the contesting defendants with reference to having seen a marked poplar tree on the right hand fork of the Race Fork of Knox Creek?

A. Yes sir.

Q. You stated at that time that you had not been to that tree nor seen it since the first time you saw it several years ago and that you had never been to the stumps that were claimed

by contesting defendants to be the stumps of certain poplar trees back of Dan Justus house, have you been to that place and seen two poplar stumps that are claimed by the contesting defendants to be the stumps of corner trees since you were here in July?

A. Yes sir.

Q. Is either of those stumps the stump of the tree that you saw or of any tree that you have any recollection of as being marked?

A. *Nara* one of them was.

Contesting defendants move to strike out the evidence of the witness.

CROSS EXAMINATION.
By Mr. Campbell.

Q. When did you go there to examine those stumps at Dan Justus house?

A. It has been two or three weeks ago.

Q. How come you to go there for that purpose?

A. Why Squire Stacey, he come and got me to go and see if them was the stumps.

Q. What is Squire Stacey's given name?

A. Why Grayson.

Q. Did he go with you to examine the stumps?

A. No sir.

Q. Who did go with you?

page 442.] A. No body went with me.

Q. Whom did you see over there?

A. I *seed* Daniels first wife and his son.

Q. What relation are you to Daniel Justus?

A. He is a nephew of mine I reckon—passes for it.

Q. On what creek do you live and how far from Daniel Justus?

A. I live on Bull Creek, about twelve miles and a half from Daniel's.

Q. Did you find the trees that you had sworn about?

A. No sir it was cleared up and if it be the same place it has been destroyed.

Q. Do you mean that the poplar trees that you testified about, they and their stumps have been *destroied?*

A. Yes sir the tree that I testified to I went back to the place where I thought it was and if that is the place it has been destroyed.

Q. That was the place where you thought it was?

A. Yes sir it has the appearance of the place.

Q. How much search did you make for the stump of the tree you testified about?

A. Well sir I looked around through the field right smart.

Q. And you don't think that either one of these stumps bore the tree you swore about?

A. No sir I don't think they are, either one of them.

Q. The poplar tree that you did see was marked when it was standing just as you said it was in your former testimony was it?

A. Yes sir.

Q. Who pointed out the two stumps that you examined when you were there the last time?

A. Why it was Daniels son.

And further this deponent saith not.

his
SAMUEL x JUSTUS.
mark.

2 days and 70 miles.

page 443.] JACKSON BAILEY, a witness *introduced* by the defendant H. C. King after being first duly sworn upon oath testified as follows.

EXAMINED

By Judge Stiles.

Q. State your age, residence and occupation?

A. Age 62 years. I live on Panther Creek or on a branch that runs into Panther, in McDowell County, W. Va. and am a farmer.

Q. At what place were you born?

A. I was born at the mouth of Turkey Creek in what is now Mingo County.

Q. Who was your father?

A. Eli Bailey.

Q. Is he now living?

A. No sir he is dead.

Q. How long ago did he die and what was his age at the time of his death?

A. I don't know just how long it has been since he died but it has been I guess fifteen years or longer. I think he was some where in seventy a little bit when he died.

Q. Do you mean between seventy and eighty years.

A. Yes sir.

Q. How long did you live at the mouth of Turkey Creek?

A. As well as I can recollect I was about twelve or thirteen years old when we moved away from there.

Q. Did you know of any of the other old settlers around in that country?

A. One of my uncles lived just above there, he was my uncle Harve Bailey.

Q. Do you know any of the other people living around the river in that neighborhood?

A. Yes sir old Fred Trent and old Bill Riffe lived there about a mile below.

Q. Did you ever learn at any time prior to say ten years ago how Turkey Creek came to be called Turkey Creek?

A. Well sir it has always been *called* Turkey Creek as well as I can remember, it was called *Tekey* Creek as far back as I can remember. I heard my father say that he killed a larger Turkey on that creek than had ever been known to have been killed there.

page 444.]

Q. Did it take its name from that occurrence?

A. That was my understanding, it took its name before I can remember.

Q. Did you hear this from your father?

A. I have heard him talk about it.

Q. Did you hear this while you and he were living at the mouth of Turkey Creek?

A. Yes sir and probably since.

Q. Do you remember whether you heard years ago and before this suit was brought any one else speaking of this same thing about your father killing a turkey, and the naming of the creek.

A. I don't recollect whether I have heard any other persons outside of my father.

Contesting defendant move to strike out the testimony of the witness.

CROSS EXAMINATION None.

And further this deponent saith not.

his

JACKSON x BAILEY.

mark.

2 days and 66 miles.

Met pursuant to adjournment this the 16th. day
page 445.] of October 1902 at Welch, W. Va.

Present same attorneys as heretofore.

J. C. CHRISTIAN, a witness introduced by the defendant H. C. King after being first duly sworn upon oath testified as follows.

EXAMINED

By Judge Stiles.

Q. State your age, residence and occupation?

A. Age 42 years and live at Welch, West Virginia, and am assistant Postmaster of Welch, and am also a surveyor.

Q. Did you go during the month of May to the Race Fork of *Knox* Creek in Buchannan County Virginia, to where Daniel

Justus lives and make any examination of some poplar stumps about 500 feet from the mouth of that drain on the left hand hill side and of the premises there about?

A. Yes sir.

Q. Who were with you if any one?

A. Mr. Dixon, Mr. Blankenship, Judge Counts, D. L. Auvil and Squire Stacey.

Q. What examination of the premises in the neighborhood of the stumps did you make?

A. We examined two stumps and measured them and I believe the first stump now on the left is what we called number 1 and the other one number 2 we taken a tape and measured stump number 1 and we also measured a log that lay in drain, it was the same size as stump number 1, and from the way that the splinters had pulled out of the stump and the way that it had been cut I am satisfied that the log had come off that stump.

Q. Did you examine that log and the stumps to see if you could find any marks as of a corner tree or anything that would indicate that the tree had been marked as a corner tree?

A. I did and found none.

Q. Did you make any examination of an old stump situate somewhat between the two poplar stumps but somewhat below a line between them and a little nearer the upper poplar stump?

page 446.

A. I did.

Q. What kind of a stump did you find it to be?

A. My judgment on the stump was that it was lynn.

Q. Did you find in the immediate neighborhood of that stump or within ten feet any evidence that there had been a sugar tree growing there at any time?

A. I did not.

Q. Were the examinations made by you made in conjunction with the other gentlemen whom you have mentioned as being present?

A. Yes sir.

Q. At whose instance or request did you go to make this examination.

A. Mr. Dixon's.

Q. How long have you been engaged in surveying?

A. From twelve to fifteen years.

CROSS EXAMINATION.

By Mr. Campbell.

Q. What kind of an examination did you make for evidence of a sugar tree near the lynn stump referred to?

A. Well we looked around for any other stump that we might take for the sugar tree, and found none. We took an ax and chopped and dug around the lynn stump.

And further this deponent saith not.

J. C. CHRISTAIN.

1 day.

page 447.] Met this the 16th. day of October, 1902, at the home of Daniel Hermon, in McDowell County, West Virginia, persuant to agreement between the parties.

PRESENT: C. W. Campbell and Edward C. Loyn, attorneys for contesting defendants.

Judge M. F. Styles, attorney for defendant, H. C. King.

DANIEL HARMON, a witness *uintroduced* by the defendant King after first being duly sworn upon oath deposes and says as follows:

EXAMINED

By Judge Stiles.

By consent of the parties the depositions of the witness given on the 25th. day of August, 1897, in the chancery cause pending in the Circuit Court of Kanawha County, wherein the State of West Virginia was plaintiff, and John V. LeMoyne and others were defendants, were read over to the witness and all of the questions therein were again propounded to him and the

several answers by him in said deposition given to each of the said questions were by the witness adopted and approved, and the said deposition was by consent and agreement of the party adopted by the witness and made a part of his deposition herein.

The deposition referred to is as follows:

DEPOSITION.

page 448.] Welch, W. Va. Aug. 25th. 1897. The further taking of depositions is resumed pursuant to adjournment on yesterday.

Present same counsel.

DANIEL HARMON, a witness called and sworn on behalf of said King testified as follows:

Ques. 1. By Mr. Stiles. State your name, age, residence and occupation?

Ans. 1. L. D. H Harmon, Sr. I am seventy-five years old Farmer. McDowell County, W. Va.

Ques. 2. What other occupation have you followed in your lifetime?

Ans. 2. I have been Constable, Surveyor and deputy Sheriff and have held other offices and occupations. I waas Constable and Deputy Sheriff 16 years before the war, and deputy Sheriff 18 years since the war. I have been Surveyor ever since 1857 and held the office of County Surveyor 4 years, but have done no surveying since 1892.

Ques. 3. Where have you lived principally during your lifetime?

Ans. 3. I lived in Tazwell County, Va. until 1867, and the remainder in McDowell County, W. Va.

Ques. 4. Are you acquainted with a tract of land now lying in West Va., partly in McDowell County, granted to Robert Morris in March 4th. 1795, known as the Robert Morris 320,000 acre grant?

Ans. 4. Yes sir I am pretty well acquainted with the 320,000 acre Morris tract.

Ques. 5. State how long you have been acquainted with the same, and whether you have re-surveyed the same or any part thereof and what you know of the corners of said tract?

Ans. 5. I think my first acquaintance with the tract was in 1842 or 1843 or 4; Yes I resurveyed it and went entirely around it; and resurveyed portions of it at different times. I first began at four white oaks on Knox Creek and ran to the corner on Muzzle Creek; three of the four white oaks were standing and plainly marked as corner trees of the 320,000 acre Morris tract, being marked on the sides coming down Knox Creek to them and on the sides leaving and going towards the Muzzle corner.

Ques. 6. About what year were these lines run by you?

Ans. 6. It was in the fifties probably between 1852 & 6.

Ques. 7. Had you seen those white oaks before that time, and if so when and how often?

Ans. 7. They were shown me in 1842-3 or 4 by William Stacey, Sr. and Conley Blankenship, grandfather of Conley Blankenship that lives in Mingo County West Virginia. I saw them frequently and saw them as much as twice a year for about ten years. I was deputy Sheriff and passed there at least twice a year on business.

page 449.] Ques. 8. Describe the location of these white oaks?

Ans. 8. They stood in a small bottom on the northwest side of Knox Creek. I should think it was from three to four miles from the head of the creek, near the mouth of a little branch, possibly a mile or a little longer when I ran the line to the Muzzle corner it ran very nearly up that branch.

Ques. 9. You have mentioned three white oaks, do you remembers about the fourth?

Ans. 9. I do not positively remember the fourth, whether it was standing or not.

Ques. 10. Do you know whether any of these trees of which you speak now standing, and what is the location of the ground

where they tood at the time you mentioned?

Ans. 10. At the time I first saw them it was a forest, but now it is cleared and the trees are gone?

Ques. 11. On what course did you run the line from these trees to the Muzzle corner?

Ans. 11. My recollection is that I ran it North 33. E. that being the patent call, giving it some variation, about 2-1/2 degrees.

Ques. 12. Did that course bring you to the Muzzle corner?

Ans. 12. It brought me close to the corner. I think within one hundred feet.

Ques. 13. What trees, if any did you find at the Muzzle corner and how were they marked, if at all?

Ans. 13. I found three trees standing there; my recollection is there was two poplars and a chestnut standing; one was down; they were marked in the proper direction for that line on the south-west side and on the other side they were marked on the south-east side towards the lynn and two chestnuts in a low gap, being corners called for of the 320,000 acre Morris tract towards which I next ran.

Ques. 14. Did you find the lynn and chestnut or any of them on that line at the place indicated by the call?

Ans. 14. I found the lynn and chestnut standing. I have been there frequently and the trees are all down except the lynn which was standing three or four years ago, when I was last there; there were chestnut logs lying there at that time.

Ques. 15. Describe the location of the trees last mentioned?

An. 15 They were in a low gap of the ridge that divides the Tug and Guyandotte waters and about four miles from the mouth of Dry fork of Tug River.

Ques. 16. Were any of these trees marked, and if so, in what manner?

Ans. 16. They were marked on the North-West side in the proper direction to approach them from the Muzzle Corner, and the

other side in the proper direction along the top of the ridge on which they stood.

page 450.] Ques. 17. What, if anything, did you find beyond this last mentioned corner?

Ans. 17. I did not find anything standing (corner trees) between there and the five chestnuts, the beginning corner of the 320,000 acres. I found the five chestnuts, my recollection is that only three of them were standing, and the logs of the others were lying there.

Ques. 18. Were these trees marked and if so how?

Ans. 18. Yes sir they were properly marked as corners of the 320,000 acre tract.

Ques. 19. Describe the location of these trees you have just mentioned.

Ans. 19. They stood near an old path that was used for a crossing place from Brown's Creek on Tug River to Indian Creek waters of Guyandotte River, near the top of the ridge.

Ques. 20. By what name is the ridge where these trees stood now known?

Ans. 20. I think it is now known as the Indian Ridge.

Ques. 21. Do you know whether these trees or any of them are now standing?

Ans. 21. None of them are standing.

Ques. 22. Do you remember of pointing out the place where these trees or any of the trees you have mentioned stood to Alfred Buskirk, a surveyor of Logan?

Ans. 22. I have no recollection of pointing any trees to Alfred Buskirk; I pointed out the place where the five chestnuts stood to different parties and among them to my son D. H. Harmon, Jr.

Ques. 23. Did you run the next line of the 320,000 acre grant from the five chestnuts, and if so what did you discover on that line and where did you stop?

Ans. 23. I ran the line and crossed Tug River, Spice Creek, Clear Fork, Dry Fork, Slate Creek, one fork of Bradshaw Creek, to the top of the ridge that divides the waters of Dry Fork of

Tug River and Dismal Creek of the Louisa River and I found no marked timber. This ridge also divided the head waters of Knox Creek from the head Waters of Panther Creek; my recollection is there is no timber called for at the end of this line.

Ques. 24. Do you know anything of an old encampment mentioned in the grant of 320,000 acres in the neighborhood of this line, and if so where and how long have you known it?

Ans. 24. In 1852, running a line of the 300,000 acres, also granted to Morris, and which is mentioned in the 320,000 acre tract, I found a corner, being two chestnuts, poplar and beech at an *old* encampment. The poplar then was down and plainly marked, the other trees were standing and marked. The encampment was near a spring and the timber about it had the appearance of having been cut away for some time and a new *groth* had sprung up. There were stones lying there having the *appearence* of having been burnt for a fire place; the place had the *appearence* of having been a camping place for hunters or ginsengers. I have seen the place frequently, the last time was in the fall of 1896. I was there then with a party of surveyors, who were running the lines of the 300,000 acres under an order of the Federal Court; one of the party pointed out this place where I saw the burnt stones and upon digging off the surface of the ground to the depth of 12 or 15 inches the burnt stones and some burnt fire coals and the *appearence* of ashes were found.

page 451.]

Ques. 25. Did you find any of the corner trees between the end of the 36-1/4 mile line of the 320,000 acre tract and the four white oaks?

Ans. 25. I did not find any. The two last lines before reaching four white oaks run along the ridge and fit the lay of the country very well according to the calls of the grant.

Ques. 26. State if you remember the length you found the line from the five chestnuts to the southern end of the survey to be, according to your measurements?

Ans. 26. The 36-1/4 miles line called for in the grant I found to be about 22 miles.

Ques. 27. State whether the marks you saw upon the trees you have mentioned on the lines of the 320,000 acre tract had the *appearance* of being ancient or of recent origin?

Ans. 27. They seemed to be ancient or very old marks.

Ques. 28. How were the trees marked.

Ans. 28. Three hacks as you come to them and three hacks on the side as you left them, as I recollect; they all had marks on them on each tree.

Ques. 29. State whether you discovered on the white oaks on the north west bank of Knox Creek any marks corresponding to any survey other than *yhe* 320,000 acre grant?

Ans. 29. No sir, I saw no other marks than those that correspond with the lines of the 320,000 acres; they were only marked the two sides as I have already described.

Ques. 30. In running the line from these trees to the Muzzle Corner called to run North 33 East or at any other time did you find any marked timber along that line, and if so what?

Ans. 30. I found marked lines and blocked some of the timber. At one place I blocked a sugar tree and cut in from three to five inches *deed* before I came to hack mark.

Ques. 31. What was the appearance of this mark and of the other marks along the line as to age?

Ans. 31. Some of them seemed to be very ancient and others of more recent date. The latter marks were made with a very narrow hatchet and the older marks with a larger hatchet.

Ques. 32. About what time did you first see the *the* trees at the Muzzle corner?

Ans. 32. I think it was between 1848 and 50, they were shown to me by Henry Ellis.

Ques. 33. State whether or not at that or at any other time you saw any corner marks on the northside of the two poplars and two chestnuts or either of them?

Ans. 33. I have no recollection of ever seeing any, and I think I should have seen and remembered any such marks if

there had been any. I remember distinctly the marks I have mentioned on the South-East and South-West sides.

Ques. 34. Describe the situation of the trees at page 452.] the Muzzle Corner?

Ans. 34. They stand a short distance from Muzzle creek, upon the bank two or three poles from the creek on the left hand side as you go down the creek. Muzzle Creek is a branch of little Huff Creek, which is a branch of Guyandotte River

Que. 35. Have you examined the plat accompanying certified copy of the original survey made by James Taylor of this 320,000 acre grant and noted the manner in which he represents the water courses upon said grant and the general geography of the tract, crossing of the streams, etc.

Ans. 35. I have.

Ques. 36. Do you find these matters to be represented on said plat substantially as you find them to be in fact by your re-surveying and knowledge of the land embraced in said grant.

Ans. 36. By reducing the lines of the survey about one third it is all very fairly laid down except the 36-1/4 mile line and I believe from my surveying of these lines and the knowledge I have of the Country, that the line was a platted line.

Ques. 37. What is your opinion as a surveyor, based upon the work you have done on said survey and your knowledge of the same and of the country embraced therein, as to the other lines of this grant, whether they or any of them were actually surveyed by James Taylor in making the original survey or whether they or any of them were platted or projected?

Ans. 37. I think most likely all were run except the 11 mile line. I have some doubt *as* to that having been run, although the course called for fits the lay of the country very well, and what makes me doubt it is the great discrepancy in the distance given and the distance I find it to be. I find it to be about half the distance called for.

Ques. 38. State whether or not you find the shape of the tract to be substantially the shape that is represented upon the said plat of survey by Taylor?

Ans. 38. I think it would be very nearly, it does not vary very *materally.*

page 453.] Ques. 39. What is the custom of surveyors, in your experience as to representing on their plats the courses of streams crossed by them in running the lines of surveys?

Ans. 39. The general practice is to give the course and bearing where you cross the stream and the balance is done from your knowledge of the country and the stream; where the line crosses the stream you should show the course of the stream at the crossing correctly on the plat, where it is shown at all.

Ques. 40. For whom did you do the surveying you have mentioned on this 320,000 acres, was it by private employment or under order of the court or for some suit?

Ans. 40. All by private employment; some was done for Max Lansburg, some for I. C. Ross, some for E. L. Fuller, some for W. R. Iaeger, some for the Commissioner of School Lands. All of these parties, except the Commissioner of School Lands, were owners or claimants of the lands or some of it, and a large portion of it I have surveyed two or three times.

CROSS EXAMINATION

Ques. 1—by Mr. Sheppard.

Ques. 1. How many of the old surveys originally made by James Taylor have been re-surveyed, either in whole or in part by you?

Ans. 1. I have re-surveyed the 320,000 and the 300,000, run round them both and round the lines of the 150,000 acres owned by Col. W. G. W. Iaeger.

Ques. 2. In doing such surveying, as you have stated, did you run any lines of any of the survey or surveys made by James Taylor?

Ans. 2. I have run no other lines only where they have bounded on those mentioned.

Ques. 3. In re-surveying the lines of the several old surveys made by James Taylor, did you find the course and distance giv-

on in the original survey and grant to be such as would take you to the corners and monuments called for?

Ans. 3. The distances seemed to be all short, I had to vary some courses to get to the objects called for; some *courses* was pretty correct. I have found the courses more nearly correct on the 320,000 than I did on the 150,000

page 454.] Ques. 4. Is it a rule as a surveyor to vary both course and distance where it was necessary to reach the trees or monuments called for in the original survey and grant?

Objected to by Mr. Stiles.

Ans. 4. That is what has always been my practice, to vary the course and distance to fit the monuments.

Ques. 5. I will ask you if that is the rule governing surveyors in the re-location of tracts of land?

Objected to by Mr. Stiles.

Ans. 5. As far as I know it is.

Ques. 6. Well your experience as a surveyor has run through a great many years has it not?

Ans. 6. Yes sir as much as 40 years.

Ques. 7. Do you find the acreage as called for in the several surveys made by James Taylor to hold out, or is the acreage more or less than called for?

Objected to by Mr. Stiles.

Ans. 7. As far as my knowledge extends about it, from ¼ to ½ less that is the case with those three surveys, the 320,000, 300,000 and 150,000 acre tracts.

Ques. 8. Do *your* remember whether the line from the Muzzle corner to the four white oaks on the North-western bank of Knox Creek is too long or too short?

Ans. 8. It is too short.

Ques. 9. If you started at the Muzzle corner and run out the distance called for in the orignal survey in the direction of the four white oaks on what waters would your distance give out and about how far from the white oaks?

Ans. 9. I suppose it would give out on Levisa Fork, I do not know where it would give out, it is only supposition

page 455.] that it would be on the waters of Slate Creek

Ques. 10. From your opinion and examination made by you of the lines of the survey made by James Taylor, did you find that he accurately surveyed by running course and distance, or were you convinced by such running and examinations as you have made of these lines that Mr. Taylor's habit was to locate his monumental calls and corners mark his corner trees, and in a good many instances estimate both course and distance?

Objected to by Mr. Stiles.

Ans. 10. My opinion is that in some surveying he run the course and distance from the fact that some courses were pretty correct, and distance was not, do not see how he could have made courses correct unless he did run them.

Que. 11. How did you find the corners, as you found them on the ground, to correspond with description given by them, by Mr. Taylor in his surveys?

Ans. 11. I found the local description to correspond very well, that is the description of them.

Ques. 12. But as I understand you, you would in a great number of instances have to vary course and distance to get to corners, but when you reached them, you found them and their descriptions to correspond with call, is this right?

Objected to by Mr. Stiles.

Ans. 12. I found the description to be pretty correct but the course and distance to not be correct in most instances, some of them however, *where* nearly correct.

Ques. 13. Did you not find in some instances, especially along the lines from the 5 chestnuts to [illegible] Muzzle Corner, that to take a meandering course by the most convenient route from one corner to the other, such for instance, as following the top of Indian Ridge instead of running *ridect* from one corner to the other that Taylor's distances would come *our* approximately correct?

Ans. 13. I never run any of those lines by following the top

of the ridge or pathway, but to do that would *lengthen* the line very much and might come out nearly correct.

Que. 14. If it should appear from actual measurements made by other surveyors that such is the case, what would be your conclusion as a surveyor as to what James Taylor's habit was in locating a survey?

Objected to by Mr. Stiles.

Ans. 14. I do not think I could say what his habit might have been.

Ques. 15. Were you acquainted with a surveyor whose name was Henry B. Harmon, whom you have mentioned in your direct examination?

Ans. 15. Yes sir I was acquainted with him in his life time, he is dead, been dead about 8 or 10 years.

RE-DIRECT EXAMINATION.

By Mr. Stiles.

Ques. 1. On the five chestnuts at the head of Brown's Creek, corner of the 320,000 acres, did you find more than one set of corner marks?

Ans. 1. I do not recollect any but the one set.

Ques. 2. In retracing the lines of these surveys of which you have spoken did you use surface or horizontal measurements?

A. 2. Surface measurements.

page 456.] Ques. 3. You speak of your rule as a surveyor, or of the rule of surveyors to vary course and distance or both to reach a corner or natural object called for in the survey; I will ask you whether that is the rule in cases where the line called for or the location of the corner is not known and in cases where the line called for in the survey that is being retraced was not actually surveyed out upon the ground, or where the surveyor believes such line not to have been surveyed by the original surveyor?

Ans. 3. Unless it is the closing line, but we always do it to get to the corner where the line has not been run; where there is a monument standing always vary it where that is the case.

Ques. 4. In retracing a line that has not been originally surveyed upon the ground and where the natural monument or object has been called for by mistake or ignorance of its location, would you in that case follow the course and distance given in the grant, or would you vary the course or distance in question of some monument or object that might answer the description.

Ans. 4. If I was satisfied that it was a mistake and the intention was to go to another point, I would go there; I would take the course and distance.

Que. 5. In the surveying that you have done on those large surveys of which you have spoken, do you in any case find the distance given by Mr. Taylor to be shorter than they are in fact?

Ans. 5. No sir I *found* none longer than his call; his distances called are all too long.

Ques. 6. I understand that you found the distance from point to point on the ground by actual measurement is shorter in every case than the distance he states in his surveys?

Ans. 6. I think in every one, that is my recollection; the distance from the Muzzle corner to the lynn and chestnut in the gap of the ridge is to my recollection nearer correct than any of them.

Ques. 7. State whether that line between the Muzzle corner and the lynn and *chestnutts* lies along the ridge or down the hillside and across the country!

page 457.]

Ans. — Down the hill side and across the country.

Ques. 8. I understand you to say that you find Taylor's courses more nearly correct than his distances; is that the fact?

Ans. 8. I think they are; I think his courses are more nearly correct than his distances are.

Ques. 9. In retracing the line of the 320,000 acres from the four white oaks corner to the Muzzle corner on the call of the grant, you say you came within about 160 feet of the Muzzle corner; do you think such approximate accuracy of the course could have been obtained except by actual survey and measurements of the course with the compass?

Ans. 9. I *thing* he must have taken his degrees regularly along the line between the principal points, with his compass, if not all.

RE-CROSS EXAMINATION.

Ques 1. If you were running a line of one of these surveys that called to stop at given timber on a given water course and you should find that water course, but the timber would be missing, and the distance would carry you beyond and across that water course when there is no call for crossing it, would you stop at that water course or run out the distance?

Objected to by Mr. Stiles.

Ans. 1. I would stop at the water course and not cross it.

Ques. 2. If you were called upon to run the line of the 320,000 acres between the Muzzle corner and the 4 white oaks, as the line of the Wilson Cary Nicholas 500,000, and in running from the Muzzle corner in the direction of the four white oaks, you should find the white oaks on the north-western bank of Knox Creek, as called for in the grant 7 miles short of the distance called, would you stop at Knox Creek or run out the distance?

Ans. 2. I would stop at Knox Creek and the four white oaks marked.

Ques. 3. Then if you should run the next line of the 500,000 acres, the call of which I believe is west 3800 poles crossing Knox Creek, several branches thereof to certain timber called for on a branch of Knox Creek and you should find a branch of Knox Creek, but the timber called for should be missing,

page 458.] and you should further find, that to run out the distance would carry you across the branch Knox Creek called for and across a mountain to the waters of Levisa Fork of the Sandy River, would you in that instance stop at the branch of Knox Creek or run out the distance to the waters of the other river?

Objected to because it is not cross examination, because the branch of Knox is not described, there being no reference to any particular branch and there being of necessity a great number of

branches of Knox Creek, because no timber is shown formerly to have existed or its location indicated and because the question is immaterial and incompetent.

Mr. Sheppard here states that he is only trying to apply the rub or theory brought out by the foregoing re-direct examination to the location *o* of one of the surveys in question in these suits.

Mr. Stiles says that he has brought out no rules of location and made no reference to any except with reference to one improperly set up

Ans. 3. I should stop on the branch of Knox Creek.

Ques. 4. The next call in the survey as I remember it is north 8000 poles, crossing Knox Creek at about 4 miles, Tug River at 12 miles, at the mouth of Turkey Creek, and up said creek and the north-western fork thereof crossing Bufalo creek and Pigeon Creek, the dividing ridge between Tug River and Guyandott river, crossing Gilbert creek twice to three sugar trees in the bottom of Guyandott River about 20 poles below the mouth of Gilbert's Creek; if you should run this line and find all the objects called for except Buffalo Creek and Pigeon Creek, but instead thereof should find two branches of Ben Creek and the bottom at the mouth of Gilbert's Creek had been cleared out but you found reputation of these corner trees and you should further find the distance to be substantially correct, but the course instead of being would be actually about 37 degrees East of North, would you run to the point called for 20 poles below the mouth of Gilbert's Creek or would you disregard the several monuments found along this line and run out the course and distance North 8000.

page 459.] Objected to by Mr. Stiles as being incompetent and immaterial and as not being cross examination, there having been no examination in chief upon the 500,000 acre tract, or any reference thereto or to any matters *contanined* in the foregoing question.

Ans. 4. If in running 8000 poles north would not cross the streams called for I would change the degree so as to cross them

and run to the point called for on the bank of Guyandotte River; that has always been my rule in surveying.

Mr. Stiles moves to strike out all the questions and answers in the foregoing so called re-cross examination and declines to examine with reference thereto.

And further this deponent saith not.

D. H. HARMAN.

page 460.] And this the 16th day of October, 1902, the defendant King by his said attorney further examined the witness Daniel H. Harmon as follows:

Q. About how large were the later and smaller marks that you noticed along the line from the four white oaks corner to the muzzle corner?

A. My recollection is that the hatchet was about two inches wide.

Q. Do you know of Henry B. Harmon having done any surveying of that line?

A. Yes sir, I know of him running around the 320,000 acres and making sub-divisions of it. That was in 1850 or 1852 is my recollection of it.

Q. Do you know of his running any of the 500,000 besides that line?

A. No sir, if he told me I have forgotten it. [He told me he had run on the 480,000 acres.]

Q. Do you know what sort of Hatchet or implement Harmon did his marking with along the line from the four white oaks to the muzzle corner?

A. It was with that small sized hatchet I have already spoken of. It was what we call a home made or shop made hatchet. It looked like it had been made by our ordinary country blacksmith.

Q. Do you know or did you ever know a man by the name of Noah Burchfield or know or him?

A. I have known Mr. Noah Burchfield for about 50 years or longer.

Q. Do you know of his being employed at any time or en-

gaged in assisting Henry B. Harmon in surveyong any of the country embraced in the surveys you have mentioned?

A. He was employed in surveying the 320,000 acres. I know this as I saw him on the lines with Mr. Harmon when he was surveying some of the lines.

Q. Did either of the sets of marks that you saw along the lines from the four white oaks to the muzzle corner

page 461.] when you were *runing* it appear to correspond in size or age with the marks on the corner trees at these cornes?

A. The marks with the larger hatchet seemed to correspond with the marks on the corner trees in size and while I didn't block any but the sugar tree the marks, that is the larger marks seemed to correspond in external appearance with the marks on the corner tree as to age.

Q. Do you recall anything as to the *heighth* at which the muzzle corner and the four white oaks were marked as to whether it was rather high or rather low?

A. It was from 4 to 6 feet was my recollection, was the marks on the timber at those corners. It was pretty much the same with the marked timber along the line as to *heighth* the marks of the older date, and there was not so many of them as there was marks of the recent date. I suppose that the timber had fallen some. There might have been some difference in the marker.

Q. About what was the size of the older set of marks and the marks on the older set of trees?

A. I would think 3 inches, they might have been a little more —they might have been made with an ordinary wood ax or with a smaller ax.

Q. In your experience in marking corners and in observing corners in surveys made by other persons what is the usual ordinary distance between the different trees marked at the same corner?

A. Some times as much as 10 or 15 feet if they can get as much as 2 or 3 or 4 trees standing closer together.

Q. What in your experience of aforesaid is the ordinary distance between the outside trees, the most distant trees of the group so marked?

A. Well it would be pretty much *as* the same as the answer before, sometimes they would stand in a circle 15 feet across or sometimes it might be more, I think I have seen them more than 15 feet apart.

page 462.]

Q. Would 50 feet or more be reasonable or extraordinary distance between trees of the same group?

A. It would be extraordinary, I have never seen none lie so far apart as that.

CROSS EXAMINATION

By Mr. Campbell.

Q. How many acres did you find in the 320000 acre survey? Objected to by the *defendent*, King.

A. I never platted it and consequently do not know.

Q. How many acres did you find in the 300000 acre survey?

A. I never platted it and don't know, the lines of all of them were short.

Q. Where was the line sugar tree standing between the muzzle and the four white oaks corner that you blocked?

A. The sugar tree that I blocked was standing on the bank of War Creek about 75 or 100 yards from Tug river on the line between the 4 white oaks and muzzle corner.

Q. Did you run this line between the alleged 4 white oaks and the so called muzzle corner before or after Henry B. Harmon had run and divided the 320000 acres the 300000 and the 480000 acres in 1852?

A. It was after he had run and divided the 320000 acres 480000 acres, perhaps may be 20 years afterwards. My running was after all his running, he run his all about the same time is my recollection. He never divided the 300000 acres he run off under order of the court about 50000 acres of the 300000 acres that had been sold for back taxes. That was in 1852 is my recollection.

Q. Did the sugar tree you blocked on little War Creek have the larger and more ancient marks or the smaller

page 463.] and more recent marks?

A. I don't recollect. I could only see a little bump or a little mark on the outside of the wood and cut out a block about 4 or 5 inches and split into it and found a hack. I cut in about 4 or 5 inches is my recollection. I found the tree had grown over the hack about from 3 to 4 inches. I don't think it was the recent mark. It was a mark of the original survey. in my judgment it was on the line of my survey.

And further this deponent saith not.

D. H. HARMON
Signed by Comr.

page 464.] Met this the 17th. day of October 1902 at Graham, Virginia, pursuant to agreement between the parties.

PRESENT: Counsel for the contesting defendants as heretofore and Judge Stiles attorney for the defendant H. C. King.

S. M. GRAHAM, a witness introduced by the defendant H. C. King after being first duly sworn upon oath testified as follows:

EXAMINED

By Judge Stiles.

Q. State your age, residence and occupation?

A. Age 52 years, residence Graham, Virginia and am a surveyor.

Q. How long have been a surveyor?

A. I have been constantly at the business for about twelve years.

Q. Have you ever done any surveying on Knox Creek in Buchanan County *Virgin* in the neighborhood of Race Fork, if so state what surveying you have done there, and when.

A. I have, in 1896 I ran a line from the mouth of Turkey Creek on Tug River, across the Knox basin and passed up Race Fork to the head. In 1898—the spring of that year, I did other work on Race Fork and in *Septimber* and October of the same

year I made a survey of a tract of land known as the Stuart tract, a part of which is on Race Fork.

In the Spring of 1898 I run out a tract of about 1100 acres that belonged to Watkins and Dotson, most of that tract though was on the Paw-Paw side, I also ran out a 127 acre tract and a 33 acre tract on Race Fork, the last two tract were patented in the name of William Estep or possible William and Uriah Estep.

Q. Did you run any line westward from the point called for as 4 white oaks some 4 miles from the head of Knox Creek?

A. I did. I ran a line due west *drum* that point to a point on the head of Home Creek, a branch of the Louisa Fork of Sandy.

Q. For whom did you do the surveying you have mentioned?

A. I was employed by J. P. Kroll who was the representative of the Panther Lumber Co. as I understood it, to locate the lines from the mouth of Turkey Creek to its point of intersection with the line running due west from the 4 white

page 465.] oaks on Knox Creek.

The work that I did in the spring of 1898 was under an appointment of the United States Court, for the Western District of Virginia.

I worked under the immediate direction of Mr. John Sheppard, attorney for C. W. Campbell, Dotson and others.

Q. How long were you engaged in that neighborhood at the different times in doing this surveying?

A. Well altogether I must have been in that vicinity, that is in the Knox Creek basin, between three and four months.

Q. How long in the neighborhood of Race Fork?

A. I suppose I was some three months altogether on Race Fork and on Lesters Fork which is on one side of it and Paw Paw which is on the other and Home Creek which is just across the dividing ridge.

Q. Do you know where Daniel Justus lives on the Right Hand Fork of Race Fork?

A. I do.

Q. What surveying did you do in the immediate neighborhood of his house?

A. Well the line that I ran from the mouth of Turkey Creek on Tug River to the head of Home Creek on the Louisa side ran up Race Fork, not very far from Justus house; and the 33 acre tract of the Estep land and the 127 acres that I ran are not far from Justus house; the Stuart line was very close to it, I dont know how far possibly 100 or 200 feet from it.

Q. Did you run the Stuart line from the corner called for as two birches, a white oak and hickory to the corner called for as a triple lynn?

A. I did., but the lynn was not standing. In the first place the birches were gone and the white oak was down and the hickory was standing. I made quite a search for the lynn and failed to find it, but found what appeared to be the stump of a double lynn burned down, and located the point there as the corner.

Q. Did you run the line in that direction—that is from the two birches white oak and hickory corner up the hollow to the lynn corner or in the opposite direction?

page 466.] A. I ran from the birch, white oak and hickory corner to the point where I supposed the lynn corner stood.

Q. Do you remember how that line agreed with the patent line in course and distance?

A. I think the distance was some greater than that called for in the patent, my recollection is the course was very close.

Q. At the time you did this surveying in that neighborhood was Dan Justus living in the same house where he now lives?

A. No sir, when I was first in there he lived on the east side of the creek on the Stuart land, he afterwards moved a short distance across the creek on a tract that was claimed by George Harmon.

Q. Were any of the people who lived in the neighborhood, with you while you were doing this surveying around Race Fork?

A. There were several different persons with me. Mose Charles, was with me all the time I think while I was on Race Fork,

Harve Charles was with me part of the time, Joab Justus, J. W. Justus, Steve Baldwin, and John Allen, and I think Daniel Justus was also with me part of the time and Frank Philips was with me part of the time—. These parties were with me on my first trip. And in the spring of 1898 John S. Dotson was with me part of the time on Race Fork, but in the location of the Stuart survey I had no one with me except my regular corps.

Q. Were these men that you have mentioned claimants of land adversely to Mr. King and were they parties to suits and actions concerning the same?

Objected to by the contesting defendants.

A. It was my *understand* that all, except possibly Baldwin and Allen and Daniel Justus, were parties to suits.

Q. Was the surveying that you were doing being done for the purposes of any of those suits?

A. Yes all except the Stuart survey.

Q. Were the men who accompanied you aware of the fact that you were employed by persons interested adversely to Mr. King to do this surveying and that it was being done for

page 467.] the purposes of suits concerning the Morris grant claimed by him?

A. They were.

Q. Was that fact also widely known throughout that neighborhood?

A. It seemed to be generally known, there were quite a number with me from the time that I started in at Tug River until I finished the work—that is at different times.

Q. Did you pay these men who were along with you or how were they compensated if you know?

A. No sir I *dident* pay them anything. Mr. Kroll told me that the citizens would help me make the survey and they did. I dont think any of them received pay except possibly Baldwin and Allen, who were employed by citizens interested.

Q. Did you stop at any time at Dan Justus house?

A. Yes sir I stayed all *nigh* at Daniel Justus either one or two

nights the first work I did in there, and I was at his house afterwards but I dont know how often.

Q. Did you, or your men, render him any assistance in putting up his house or any portion of it?

A. Yes sir I had my men put up an arch rock for him when he was building his chimney. That arch rock was to the chimney to an addition to the cabin in which he was living.

Q. Do you remmber who was with you when you ran the Stuart lines?

A. I had three of Wes Justus' boys, one of my own sons and I dont remember whether we had another man or not.

Q. In the surveying that you did at different times on Race Fork and in the neighborhood of it, did you make any search or have any search made for marked poplars or marked sugar trees or make any inquiry for such trees?

Contesting defendant object to so much of the foregoing question as relates to the *inquireys* made.

page 468.] A. I made a search myself on the head of Race Fork above the Estep tracts and had two parties with me that looked for an hour or two, I dont remember how long they did look. That is the only locality in which I made a search. I made inquiries of different parties, if they had seen *and* poplars or sugar trees marked any where in that locality, but heard of none.

Q. Did the men you have mentioned as being present and who were claimants of land and others who were with you know what kind of marked trees you were in quest of or wished to find?

A. Some of them knew and others I told.

Q. Was any inducement or incentive held out by you to those people or the people of the country to find or inform you of such trees?

Objected to by contesting defendants.

A. Yes sir, I spoke to them of the importance of finding those trees, the most of them seemed to realize the importance without my telling them. I told one fellow who was working with me

there on Race Fork, he was not a native however, that I would guarantee him $25.00 if he would find them.

Q. Aside from such poplars or sugar trees, if any, as you found to be the corners or line trees of the smaller surveys when you were running did you find or hear of any marked poplars or sugar trees in the vicinity of Race Fork, or on the Fork or its branches?

A. I did not hear of any, except those which were known to be corners or line trees of other surveys.

Q. What was the sentiment in the Knox Creek county towards Mr. King and his claims, whether it was hostile or friendly?

Objected to by the contesting defendants.

A. It was hostile.

Q. Did that *hotility* appear to be general?

Objected to by the contesting defendants.

A. Yes sir, the feeling seemed to be the same throughout the entire country there.

page 469.] Q. What, in your experience, is the usual or ordinary distance *beween* corner trees of the same corner in a heavily timbered country? That is within how large or small a circle would they ordinarily be included?

Objected to by the contesting defendants.

A. Well where there are three of four trees marked they would generally be included within a circle or from ten to twenty feet in diameter, cases might be found where the circle would be greater—there is not much regularity in those things.

Q. Are you well acquainted with the growth of different trees, such as are found on Knox Creek?

A. Yes, I have known the different kinds of timber that grows on Knox Creek since my early boyhood days.

Q. Is the black gum a tree of slow or rapid growth and of long or short life?

A. It is a tree of rather slow growth and of long life.

Q. Is it of the character to retain the impression of an ax mark and adapted to the purpose of corner monuments?

Objected to by the contesting defendants.

A. Yes sir, it makes a first class corner and retains the marks

as long, if not longer than any other kind of tree—that is in the bark.

CROSS-EXAMINATION

None.

And further this deponent saith not.

S. M. GRAHAM.

1 day and 80 miles.

page 470.] Met this 7th. day of January 1903, at the office of the commissioner in the city of Huntingtor, West Virginia, pursuant to adjournment and by agreement made between the parties.

PRESENT. C. W. Campbell, attorney for the contesting defendants.

Judge M. F. Stiles, attorney for the defendant H. C. King.

The defendant H. C. King thereupon resumed taking depositions in behalf of himself.

W. D. SELL, being introduced by the defendant H. C. King, after being first duly sworn upon oath testified as follows:

EXAMINED

By Judge Stiles.

Q. Are you the same W. D. Sell who have already testified in this case?

A. I am.

Q. I hand you a map marked "Robert Morris 500,000 A., 320 poles 1 mile,—one inch, enlarged from original survey," by whom was that made and how?

A. By myself, from a certified copy of a plat attached to the certificate of survey of the Morris 500,000 acres, made by James Taylor. The map was on a smaller scale and in the enlargement all the details of streams etc. were carefully followed.

Q. Does the map differ from the plat returned by Taylor in any respect except in the scale upon which it is drawn?

A. It does not.

Here the defendant King filed the map made by the witness and for purpose of identification the same is marked W. D. Sell Enlargement of Taylor Plat.

Q. You have heretofore testified with regard to the surveying that you have done upon the land in controversy in
page 471.] this suit you may state what timber you found at the beginning corner of the 500,000 acre *ttact*, how it was marked, what you did with reference to blocking any of it and how the trees at that corner stood with reference to each other?

A. At the beginning corner on the left hand fork of Muzzle Creek, a branch of Little Huff Creek there was standing at the time I did the surveying a green poplar, a poplar snag and two down chestnuts. The green poplar was marked on the southeast and south west sides for a corner, one of the down chestnuts was blocked taking the block from what would have been the south-east side of the tree standing and the same when split open showed proper corner marks. The annulations outside of said corner marks counted 97 years. This block was taken and filed with the Clerk of the United States Court in the case then pending, at Parkersburg and is the same block that is now in the office of the Clerk of the United States Court at Huntington, West Virginia. A cutting was made to take the block out of the north side of the tree but no marks were found. The south-west side of the tree was next to the ground and could not be got at. From the green poplar to the poplar snag was 18 feet; from the green poplar to chestnut No. 1 was 10 feet; and from the green poplar to chestnut No. 2 was 34 feet, these were the only trees of any size within 50 feet in any direction. The block was taken from chestnut No. 1.

Q. Which of these trees would the line running from the four white oaks to Muzzle, first reach?

A. It would reach the green poplar.

Q. Was the old down chestnut in a condition to disclose whether it had been marked?

A. Chestnut No. 2 had been down such a time that it would have been *ijpossible* to discover the marks as it was considerably rotted and moss grown.

Q. Could you judge anything of the length of

page 472.] time it had been down?

A. No it might have been down ten or fifteen years.

Q. Could it have been down a good deal longer than that?

A. Yes it could.

Q. At about what height from the ground did the block come out that you took from chestnut No. 1?

A. At about 5 feet from the ground.

Q. Have you recently examined that block?

A. I have this morning at the office of the Clerk of the United States Court, in Huntington, in the presence of Commissioner Graham and attorneys Campbell and Stiles and V. A. Wilder.

Here the defendant offers the block referred to by the witness in evidence in this case and the same is filed.

Note by commissioner. This block is in the custody of the Clerk of the United States Court at Huntington, West Virginia.

Q. Who were present when the block *cas* taken out of the tree?

A. Attorney M. F. Stiles and H. K. Shumate and V. A. Wilder, representing Henry C. King, Walter C. Reddy, my co-surveyor, in cases then pending in the United States Court, William Riffe Jr., a resident of the vicinity and myself; this was on the 6th. day of May 1895.

Q. Was the distance between the standing poplar and chestnut No. 2 the maximum distance between any of the trees of that corner?

A. It was.

Q. Have you ever surveyed a tract of 248 acres at the mouth of Gilbert Creek and on Guyandotte River patented to Edward Crawford and described as lying at the mouth of War Creek of

Guyandotte River, a copy of the survey and patent of which has heretofore been filed in this case? If so when and state what, if anything you found in the way of corner trees or *orther* objects called for?

A. I did in 1895, running the first three calls page 473.] of the patent I began at a *pint* a short distance below the mouth of Gilbert Creek at a beech and poplar stump, the same being shown to me as the beginning corner. The object of the surveying being to locate this tract as one of the reservations in the Morris grant, when I ran the first three calls this was *sufficiett* to lay the same down using my prior surveys of the meanders of Guyandotte River for the remainder of the lines.

Q. Did you make a map of your survey of that tract?

A. I did and the same was filed at Wyoming marked K. D. B.

Q. About how far below the mouth of Gilbert Creek did you find the stumps of the beginning corner, describe the locality?

A. I made a very carefully survey of the mouth of Gilbert Creek and its vicinity for the defendants in the case of King vs. Altizer, then pending in the United States Circuit Court and it is my impression that the distance from the mouth of Gilbert Creek to this corner was about twenty poles, possibly a very few *fet* over that amount. This corner is at the place on the bank of Guyandotte River where the narrows begin. The map K. D. B. is not the map that I prepared of the work mentioned in the King vs. Altizer case, and on this K. D. B. map the mouth of the creek is not drawn properly but should be a greater distance from the Crawford beginning corner than thereon shown.

Q. In the course of your surveying of the Crawford tract did you ascertain whether the same had been actually surveyed on the ground originally for the survey upon which the grant was issued

A. With reference to the actual running of the lines by the original surveyor I formed a conclusion that he had meandered carefully Guyandotte River and Gilbert Creek and made corners and then laid his survey down on that meander line.

Q. How did you find his meander and location of Guyandotte River and War Creek, as he calls it to correspond with Guyandotte River and Gilbert Creek according to your survey, whether they were substantially the same or materially

page 474.] different?

A. The streams as laid down on the surveyors plat agreed with the streams as actually located closer than any sur. .y of that age I have ever seen and were substantially the same

Q. By the expression "actually located" do you mean as you found them to exist at the time of your survey?

A. I do.

Q. Have you ever platted out the courses and distances of the lines as given in this Morris 500,000 acre grant to ascertain whether they will plat to connect up if so state the result of that platting?

A. I have taken the courses and distances as given in the certificate of survey and the same connects up and closes without appreciable error, the acres being as given in the same 504,000 acres.

Q. I hand you a map appearing to represent certain tracts and ask you what it is and from what compiled and by whom?

A. This map shows the James Taylor 9260-1/4 acre tract, Call McGregor 25000 acre tract, Samuel Moore 43162-1/2 acre tract and John W. Kettera 180000 acre tract, copied by me from the several certified copies of the certificates of survey and platted on a uniform scale of one mile to the inch. The several tracts as laid down are identical with the originals except as the size and scale of the same.

Q. Does this map represent the location of the several tracts relatively to each other according to the calls for each other in said surveys?

A. It does.

Still insisting upon the objections heretofore made to the intro-

duction of any of the surveys in evidence the defendant King offers this map as part of the testimony of the witness.

page 475.] The foregoing map referred to by the witness is filed with the commissioner marked "Map of Taylor Surveys"

Q. The Stone map is stated by him to have been copied from a copy of a map made by himself and that the figure represented by the letters MX, CC, 9 to UU and the mouth of Turkey Creek was laid down on that original map as representing the Kettera 180,000 acre survey, you may state at whose direction you laid that survey down in the manner indicated and whether by actual survey and running of the lines or by protraction according to instruction?

A. The lines referred to were not run on the ground. They were laid down on the map under the direction of Messers Sheppard & Ellison, attorneys for W. E. Chilton to be used in a case then pending in the United States Court. The points were designated on the map as the places to and from which to mark down the lines.

Q. Have you any knowledge concerning the existence or former existence of corner trees at any time at the various angles or corners of that figure?

A. I have not.

Q. How has the course or length of the western line of figure or survey as laid down on the map been varied from the call of the survey and plat?

A. The course as given in the original survey is north 12 miles, the course is laid down on the Stone map, North 19 miles an extension of 7 miles. In the original survey the second course also forms part of the western line and is north 12 west 8-1/4 miles. On the Stone map this course is swung around 120 degrees to the right making the course about south 80 east and the distance is 10 miles. This makes the northern half of the western boundary line as given in the original survey the northern

page 476.] boundary of the tract as laid down on the Stone map.

Q. The part of the western boundary which *calls*

for north 12 miles you find extended to 19 miles, the course being unchanged the eastern line of the tract on Taylors plat and survey is also a north and south line 12 miles in length, how does that line as laid down on the Stone map compare with the opposite line of the same stated length and direction?

A. The course is varied about 35 degrees and the distance is only about one half what it should be.

Q. The last call of the Kettera survey is south 3840 poles with said line, crossing the dividing ridge between Guyandotte and Sandy Rivers, crossing Pigeon Creek, Buffalo Creek and several small branches to the beginning, would the beginning of that line from that description lie south of Gilbert Creek or north of it and would you infer or expect to find that that line crossed Gilbert Creek

A. I would expect to find that corner south of Gilbert Creek and would not expect therefore that such line would cross Gilbert Creek at all.

Q. The first object called for on that line is the dividing ridge between Guyandotte and Sandy Rivers, if you locate UU the beginning of that line between Gilbert Creek and that ridge what then would be the length of that line?

A. About three miles and a half.

Q. That line of the Kettera calls for crossing several small branches after crossing Pigeon and Buffalo Creeks, does that line as laid down on the Stone map cross either Pigeon or Buffalo Creek?

A. It does not.

Q. If you let the two little forks or branches of Ben Creek represent Pigeon and Buffalo Creeks is there anything along that line that could answer for "several small branches" page 477.] or any branches for that line to cross?

A. No sir.

Q. Can you plat down on the lines of the Kettera as laid down on the Stone map the 25000 acres or 9260-1/4 acres in conformity

with the courses and distances of any of those tracts or in conformity with the streams represented thereon?

A. You cannot. The location of the Kettera survey on the Stone map *complely* destroys the integrity of that whole series of Taylor's surveys.

Q. If you were to attempt to locate the 25000 acres whose eastern line is coincident with the line of the Kettera called to run north 12 west how would the 25000 acres lie with reference to Guyandotte river and Twelvepole and how would its boundary lines be effected as to the points of the compass?

A. To do this you must swing every course of the McGregor survey 120 degrees, the eastern boundary line would become the southern. Guyandotte River instead of merely touching the tract at one corner would lay inside of it and would leave Twelve-Pole entirely out of the survey.

Q. Please mark the corners on the "Plat of Taylor Surveys" to *correspojd* with the corresponding corners of the Kettera as laid down on the Stone map?

A. I have done so affixing the figure 1 after the corresponding letters.

Q. It appears that the Call McGregor 25000 acres has a corner 9, 1, which is its north-east corner, coincident with the figure 9 on the Stone map, if you locate the McGregor from that corner 9 on the Stone map where will it lie with reference to the Kettera?

A. If the McGregor is platted by the courses and distances as given in the certificate of survey, beginning at 9 on
page 478.] *Staone* map then it will lie inside of the Kettera survey as located on the Stone map.

Q. The Call McGregor purports to include several small branches of Island creek in its northern and north-western portions if you assume that the Island Creek laid down on the Stone map is the Island Creek referred to by Taylor and you locate the McGregor so as to include such branches in its northern and north-western portions would the McGregor lie wholly outside of and

west of the Kettera as it purports to do or would it lie entirely or chiefly inside of it?

A. It would lie chiefly inside of it.

Q. If you locate the Call McGregor of Twelvepole so that Twelvepole shall flow through nearly the whole southern portion of it as called for in the plat and certificate of survey of that tract will it embrace any of the branches of Island Creek as laid down of the Stone map?

A. It will not.

Q. What creek, if any would then most nearly correspond to the island creek represented by Taylor on his plat of the McGregor?

A. Big Harts Creek.

Q. Does Taylor represent the western boundary lines of the Kettera as lying east or west of the mouth of his Island Creek?

A. East.

Q. How far west of the mouth of Island Creek is the western boundary of the Kettera as laid down on the Stone map?

A. About 8 miles.

Q. How far and in what direction does Taylor put the terminus of his first western boundary of the Kettera from the mouth of his Island Creek?

A. About south 20 east 14 miles from the mouth of Island Creek.

page 479.] Q. And the corresponding point as laid down on the stone map is how far and in what direction from the creek we know as Island?

A. It is about north 80 west 8 miles.

Q. According to James Taylor the Taylor 9260-1/4 acres has nearly one point in common with the Kettera—the southeast corner at 9-1, if you assume that Island Creek as shown of the Taylor survey is the same as the Island Creek shown on the Stone map and you locate the Taylor 9260-1/4 acres according to the mouth

of that creek, how will it lie with reference to the elder Kettera survey?

A. About half inside of the Kettera survey.

Q. Taylor in his survey and plat represents the western boundary of the Samuel Moore 40152-1/2 acres as crossing Pigeon Creek and some of the waters of Guyandotte River, while some of the waters of Island Creek are represented as lying in the northwestern portion of the tract and west of the waters of Guyandotte are there any waters of Guyandotte in any such locality as is represented by Taylor?

A. There is no place that the streams are in that relative situation

Q. This survey taken in connection with the McGregor which binds upon it on the north represents the waters of Guyandotte as lying between Pigeon Creek and Twelvepole river, are there any waters of Guyandotte between those two streams?

A. No.

Q. The John Green 84000 acre tract is represented on the Stone map in the original from which this was copied did you survey that out or did you lay down the lines or some of them by the courses and distances given in the grant?

A. I laid down this using the courses and distances as given in the grant.

Q. Did you measure the length of the ax mark in the chestnut this morning? If so what did you find the length of

page 480.] those marks to be?

A. I did and found them to average two and three fourths inches in length.

Q. Did those marks appear to have been made by a right handed or left handed chopper?

A. They were made by a left handed chopper.

Q. Have examined the poplar block produced in evidence by the contesting defendants as a block from a line tree some what west of the four white oaks on Knox Creek?

A. I have.

Q. Do the marks in that block appear to have been made by a right handed or left handed chopper?

A. They were made by a right handed chopper.

Q. Having had that block sawed open do you discover anything that indicates about when those marks were made on that tree?

A. The marks on this block evidently did not go through the bark. There is a discoloration dating about forty years back which indicate *asome* deadening or bruising effect such as frequently appears in blocks taken from trees which have not been marked through the bark. In my opinion this tree was marked about that long ago.

I hand you a map in colors of certain tracts of land and ask you to state what it represents and how it was compiled?

A. This map is an enlargement of the southwest corner of a map by S. M. Graham, prepared in the case of King vs. Justus from 200 poles to the inch to 100 poles to the inch and at and near the point S on the colored map Race Fork is laid down from a map filed by Walter C. Reddy in this case.

Q. What does the point S represent or correspond with upon the Stone map?

A. To the corresponding point S.

page 481.] Q. Do you know whether the map from which you made this enlarged drawing was produced and used by the said Graham, as a witness for J. N. Watkins in the trial of the case of King against Justus, as to said Watkins?

A. Yes sir it was.

Q. Have you compared the 111? acre *trace* and 6?0 acre tract represented on this drawing with the calls of the grants for those tracts and if so can you state whether these tracts are correctly laid down and plated from those calls?

A. I have. They are.

Q. In the 111? acre tract there is a call for three lynns from one root, can you indicate on what corner on this map those trees mark?

A. I have marked that corner in "3 Ly".

Q. Please mark the beginning corner of that tract with a letter "E"

A. I have done so and also run an arrow to indicate the direction of the first line

Q. Is the Race Fork as shown on this map correctly laid down from Reddy's map, reducing the scale of his map to the *scale* of this one?

A. It is.

The map *refered* to by the witness is tendered and filed by the defendant King marked "Watkins Lands"

CROSS EXAMINATION.

By Mr. Campbell.

Q. Did you find that the green poplar tree at what is called the Muzzle Corner had been blocked before you saw it on the north side?

A. No sir, I dont think it was blocked, it is my recollection that a shallow block had been taken out of the poplar snag on the north side. *north side.*

page 482.] Q. Are you positive that the green poplar tree had not been blocked on the north side?

A. I dont recollect that it was.

Q. Dont you remember that Captain Mathews and Sid Stone during one of the trials of the King case at Parkersburg blocked one other side of the same poplar tree and that in consequence of the last blocking and the blocking on the north side the tree fell

A. No sir I dont know that except from hear say.

Q. What do you mean by a shallow block?

A. Oh one three or four inches thick in all.

Q. If that block had been taken out some time in the 80s do you mean to say that it was not deep enough to show ax marks that may have been made in it in 1794?

A. I dont believe it was. I *dident* take any actual measurements of the depths of that block and am only speaking of my general impression.

Q. If Captain Matthews says he blocked that tree and counted the annulations back from the date of blocking to certain ax marks found disclosed by the block and such annulations run the date of the hacking to 1794 would you still say that in your opinion that blocking was too shallow?

Objected to by defendant King because Captain Matthews has not said so and this witness is not to be the judge of Matthews veracity, if he had said so.

A. Of course not.

Q. How often did your running of the first line of the Morris survey cross Little War Creek of Tug River?

A. My running did not cross it at all for I missed the corner on Knox Creek some distance to the east.

Q. How far east of what was supposed to be the location of the 4 white oaks?

page 483.] A. It is my recollection it was about 1000 feet.

Q. Did you then correct your bearing and re-run that line?

A. I corrected the bearing but did not re-run the line.

Q. What bearing did you run on?

A. I ran south 37 west and corrected the same to make it south 37′ 53″ west

Q. Then the line between your Muzzle corner and the 4 white oaks is a platted line?

A. No sir it is what I would call a calculated line.

Q. You then never ran that line on the ground?

A. Not direct between the corners.

A. Will any of the water shed of Little War Creek of Sandy River be included by that calculated line?

A. Yes sir I feel certain that there is some of the water shed included.

Q. Where and what part?

A. Some of the right hand hollow of Little War Creek which flow into the same near the mouth.

Q. How far above the mouth does your calculated line cross Tug *Riv* River?

A. I dont know as I am not able to answer without reference to my notes which are not here.

Q. If you were to take that first line between A and P as a correct location of the first line of the survey will the survey close by following course and distance given in the grant and survey from that point?

A. It will not.

A. What stream drain the lands immediately west of Gilbert Creek?

A. Guyandotte river and its branches.

Q. Is Guyandotte River west or north of Gilbert Creek?

A. It is rather north-west.

page 484.] Q. Well I repeat the question and ask that you answer it?

A. I repeat the answer.

Q. Are you sufficiently familiar with the country there to say where Horse Pen Creek is?

A. Yes sir.

Q. What direction does that lie from Gilbert Creek?

A. It is a branch of Gilbert Creek lying west of the main stream.

Q. In what direction from the stream that is called Gilbert does the land drained by Horse-Pen Fork lie?

A. West of Gilbert Creek.

Q. What water or stream of the Guyandotte River drain the country lying immediately west of the land drained by the Horse Pen Fork of Gilbert?

A. Island Creek?

Q. Has Island Creek a west Fork?

A. I think Whitmans Creek might be regarded as the west fork of Island Creek. With reference to forks of creeks being designated by points of the compass there is no uniformity in the old surveys.

Q. In what direction from Island Creek does the land drained by the Mud Fork of Island Creek lie?

A. It lies west of main Island Creek.

Q. In what general direction does Mud Fork flow?

A. Practically east—a little bit south.

Q. How far from the mouth of Island Creek does the Mud Fork enter the creek?

A. About one mile.

Q. How above the main the first fork of the main Island Creek after you leave the river?

A. About a quarter of a mile.

Q. What is the comparative sizes of the Mud Fork and Whitmans Creek?

page 485.] A. About the same.

Q. In what direction does Whitmans Creek flow?

A. North—its general direction.

Q. How much further west is the head of Mud Fork of Island Creek than the main body of Whitmans Creek?

A. About three miles and a half.

Q. What waters drained the land of country immediately west of the land drained by the Mud Fork of Island Creek?

A. Twelve Pole River.

Q. Do both forks of Twelve Pole reach the country immediately west of the Mud Fork of Island.

Q. Yes sir.

Q. What is the distance from the mouth of Turkey Creek down to the mouth of Blackberry?

A. I dont know the distance by the river but in a straight line it is thirteen miles.

Q. How much would that distance be increased in your opinion to follow the river?

A. I should guess it to be about eighteen or nineteen miles—that is the total distance.

Q. What is the general direction of the mouth of Blackberry Creek from the mouth of Turkey Creek?

A. About north 70 west.

Q. What is the general course as shown on your enlarged map of Taylors Kettera survey?

A. About the same.

Q. In platting the Kettera survey why did you extend the second call 19 miles?

A. It is my recollection that J. B. Ellison, of the firm of Sheppard & Ellison personally directed the placing of those lines as on the map originally and that as the call is for Twelve Pole River the line was extended to that steam.

page 486.] Q. The third call in the Kettera survey is described as crossing the dividing ridge between said rivers and Guyandotte River, crossing the most west fork of Island Creek and the main creek a few poles below the first large fork of said creek, *crossin* and leaving the same, crossing several small branches to five white oaks by a branch a few poles from the river on the south side thereof, which of those natural monuments, if any, does the line on the Stone map CC to 9 cross?

Objected to by the defendant King.

A. Mr Ellison had that line laid down in such a manner as to cover all the creeks and streams and natural objects mentioned in the description of the line.

Q. If that line were run north 12 west would it touch any of the natural objects called for except the dividing ridge between Twelve Pole and Guyandotte?

A. It would not.

Q. The next call is described as "up and near said river on both sides thereof to four white oaks near a small branch", assuming that the end of that line is on the river as indicated by the next call does a line from the end of the third call at 9 to the end of the fourth call cross Guyandotte River one or more times?

A. It does.

Q. The next line is described as "leaving the river crossing several small branches the head of horse-pen creek to three white oaks and a sugar tree in the line of a survey of 500,000 acres

made for said Nicholas does that line as laid down by you cross any head waters of Horse-Pen Creek?

A. It does.

Q. How far is the point UU from ZZ?

A. One mile.

Q. According to James Taylor's distances what does he make it from the mouth of Turkey Creek to the mouth of

page 487.] Gilbert Creek?

A. Thirteen miles.

Q. How far does he call it from UU to Tug River on the Kettera line?

A. Twelve miles.

Q. Did you ever run on the ground any of the lines of the Moore 32955-1/2 acres, aside from meandering the Guyandotte River—the south boundary?

A. I did not.

Q. If the map made by S. M. Graham which you have copied in part and enlarged is a correct map of the land and creeks why did you not copy the water courses as he had them laid down on his map?

A. I think the creeks are the same as Graham has them except at Race Fork where I placed the same as shown on the map filed by W. C. Reddy in this case at the request of attorney M. F. Stiles being informed by him that Mr. Reddy had made *and* actual survey of the stream at that point.

Q. Did you find any of the timber called for in the Crawford 248 acre survey still standing when you ran some of the alleged lines of that survey?

A. No sir.

Q. When you gave your deposition in this case for the first time when it was pending in Wyoming County what attorneys if any aside from any one who may have been representing the State were present?

A. It is my recollection that M. F. Stiles was present and Colonel Childers, the latter I understood representing the State

Q. Was John A. Sheppard present the first time you were on the witness stand in Wyoming?

A. My previous answer referred to the time of the taking of depositions before D. A. Robertson, the then newly appointed *commissione* in that case. Some time before that depositions were taken before Joe Robertson and at that prior taking

page 488.] I recall that John A. Sheppard was present but I do not *recolect* any other attorneys who were there except M. F. Stiles.

Q. What attorney examined you in chief on that prior occasion

A. I dont remember it must have been by Stiles or Shumate and I believe that Sheppard cross examined me but I am not certain about that.

Q. When you were put on the second time at Wyoming what attorney examined you?

Defendant King objects to the question and all other questions relating to the examination of the witness at Wyoming.

A. I would be certain but I believe Robertson asked the questions.

Q. How come you to go to Wyoming on that second occasion that you have mentioned to give your deposition?

Objected to by defendant King.

A. On a subpoena from Joe Robertson who was the Commissioner of School Lands.

Q. How did you get that subpoena?

A. I had come from the head of Buffalo Creek that day and in the evening it was delivered to me by a party from Wyoming the deputy constable or deputy sheriff and I left the next morning.

Q. What time in the evening did you get the subpoena and what time in the morning did you leave Logan Court House?

A. I think it was possible seven or eight oclock in the evening and left the next morning early—about day light, or as soon as I could get a horse.

Q. Before going in answer to response of the subpoena what did you understand was wanted with you?

A. The recollection of these matters is not very clear I think I understood that it was phase of the King case page 489.] but I do not remember just how I so understood it. I believe Mr. Robertson wrote me a note in which he may have mentioned this fact In some proceedings in connection with this trip in which I testified in the Circuit Court of Wyoming County I remember that the facts were then very clear to me but just now they are hazy.

Q. When you arrived at Oceana what lawyers did you find appearing in the case?

A. Stiles and Childers.

Q. Did you observe the absence of Mr. Sheppard?

A. Yes.

Q. Was that fact remarked upon by any person if so what was said?

A. No sir I dont remember that it was.

Q. Was the fact referred to in any way by any one?

A. I dont believe it was.

Q. When they began to examine you upon the same matters and upon the same line and practically the same identical questions were again asked you as had been asked you as on the former occasion when Sheppard was present, did you think to remind counsel that you had once covered those points in your former depositions in this case or was that fact in any ways referred to?

Defendant King objects to the question and all the evidence relative to the taking of the depositions at Wyoming.

A. Yes sir I called attention to the fact and Mr. Robertson explained to me that there being a new commissioner in the case they would have to go over the same ground.

Q. Before leaving your home at Logan Court House in response to that summons or subpoena did you notify any body in

Logan County of the fact that you had been called and were going to Wyoming to testify in this case?

A. No sir.

page 490.] Q. On your return to your home after giving your testimony and noting the fact that your evidence had been retaken in whole without regard to your former testimony and the fact that Mr. Sheppard who had appeared on the former occasion was absent did you notify any person in Logan County what had taken place and the circumstances under which it did take place?

A. No sir.

Q. Were you requested by the person who gave you that subpoena to leave your home that night and go part of the way to Wyoming?

A. Yes sir I understood that they were waiting for me up there and that some message had miscarried, I was tired out and *dident* go.

Q. The messenger and subpoena were the first intimations you had that the taking of proof had been resumed in this case, were they not?

A. Yes sir.

Q. At the time and both before and since that time some of the people in Logan Caunty and especially most prominent citizens and lawyers at Logan Court House were manifesting a lively interest or concern about the King litigation, did they not?

A. Yes sir.

Q. It had been nearly a year had it not since your first appearance on the witness stand in this case in Wyoming?

A. That I don't remember, the record will show. It does show about a year. That is from the 8th. of September 1896 to the 19th. of September 1897.

Q. Did you understand that prior to the giving of your evidence on the 8th. of September 1896 that the Judgment in favor of McClintock and Mullins in ejectment at Parkersburg had been

carried on writ of error to the Supreme Court of the United States and that when you gave your depositions on the 10th. [page 491.] of September 1897 that writ was still undetermined?

A. I may have known that and possibly did but I *dident* keep posted about those matters or charge my mind with them. Yes I guess I knew it.

Q. Was Judge Stiles at Oceana when you arrived there on that second occasion?

A. Yes sir.

RE DIRECT EXAMINATION.

Q. Was not the subpoena that caused you to Oceana made returnable forthwith?

A. I think it was

Q. Is it your custom to go around notifying people that you are going anywhere as a witness before you go or to do the like upon your return?

A. No sir I have always been rather secretive about business engagements of any kind.

Q. By which you mean I presume that you dont take pains to *mentioned* them unless there is occasion for doing so?

A. Yes sir.

Q. Were you in any way interested in this case when it was *pendin* in Wyoming county or concerned with the conduct of it or with what was done in it more than to perform such service as you might be called upon in your character as surveyor?

A. No sir.

Q. Was the question of what was done or what omitted a matter of any consequence or concernment to you?

A. No sir.

Q. Do you know W. E. Justus?

A. Yes sir. He was in and out of the office repeatedly at while my deposition was being taken at Oceana the second time, in fact

as I remember he was interested in taking some depositions in the same office at the same time.

page 492.] Q. He was one of the class *pf* persons just mentioned by Mr. Campbell as being especially concerned and manifesting a lively interest in the King litigation, was he not? and was a defendant in some of the ejectment and injunction cases then pending in the United States Court?

A. Yes sir. He was very much interested in the case and I think he was one of the defendants.

Q. Were there other persons in and out of the office and about the office wherein your depositions were taken and while it was being taken the same as is usual in such cases?

A. Yes sir, the office was full all the whole day. Mr. Robertson as I recollect was counsel and examining witnesses at the same time that my examination was going on, in another case, in the same office.

Q. Was Mr. Sheppard living at Logan Court House at the time mentioned?

A. I believe he had moved to Williamson.

Q. Soon after your return to Logan Court House from Oceana did you go out into the field again and resume your surveying?

A. I don't remember.

Q. How far is it from Logan Court House to Oceana?

A. Thirty-two miles.

Q. Ride that journey in September one has to make pretty early start doesn't he?

A. Yes sir and I recall at that time I went in a buggy and it took longer *that* to go a horseback and therefore I had to get an early start.

Q. In a question asked you on cross examination it is stated that the call on a line of the Kettera is "up and near said river on both sides thereof to four white oaks near a small branch"

that line as laid down by you on the Stone map by direction of Mr. Ellison runs from 9 to what point?

page 493.] A. To the mouth of Rich Creek.

Q. Are you acquainted with the locality at the mouth of Rich Creek and with that creek?

A. Yes sir.

Q. Are there any four white oaks there that you know or ever heard of a corner to anything?

A. I never heard of the corner of the Kettera survey at that point.

Q. How long is Rich Creek?

A. It is about six miles long I think.

Q. Would you describe that as a small branch?

A. No.

Q. You were asked by counsel if assuming that the end of that line is on the river as indicated by the next call that line from 9 to the end of the fourth call crosses Guyandotte River once or more times and you say it does, was that line not platted down without regard to course, distance or corner trees with a view to making it cross the river and in such a direction as to make it cross the river one or more times and extend up the river on both sides thereof?

A. Yes sir.

Q. Could not the same thing be accomplished with that line if you begin it some three miles down the river and end it where you now begin it at the figure 9?

A. Yes sir.

Q. In fact you can lay down a great variety of lines in different places that will do the same thing, can you not?

A. Yes sir.

Q. Do you know or did you ever hear of any one claiming title to any of the surveys made by James Taylor, lying west of the 500,000 acres?

A. No sir.

page 494.] Q. How long since you first settled at Logan Court House

A. I located there in the spring of 1891 and *moven* about September 1900.

Q. Were you familiar throughout a large portion of Logan and what is now Mingo Counties?

A. Yes sir.

Q. Who indicated to you the corner of the Crawford survey at the time you surveyed out that tract or a part of it

A. Lee Ellis, who lived on that survey pointed out the first and the third corners of the same; at the end of the third line I did not find the corner but Adolph Spratt, who lived on another part of the same survey informed me the corner had stood just about where I had run the distance out for it.

Q. *Di* Lee Ellis and Adolph Spratt or either of them claim to own all or any portion of that tract?

A. Yes sir. They owned portions of it.

Q. Would the beech and poplar stump pointed out to you as the beginning corner be properly described as standing on the bank of Guyandotte River at the lower end of the bottom below the mouth of Gilbert Creek at the head of the narrows?

A. Yes sir.

Q. I will ask you whether your own examination of that neighborhood and your own observation of the mouth of Gilbert Creek and its surroundings disclosed to you anything to indicate that there had been a change in the course of that creek at or near the mouth at any time, since the Crawford survey.

A. They did not.

Q. Was the examination of the trees at the Muzzle corner and the blocking of the chestnut done before or after the green poplar tree was cut down by Stone and Matthews during the trial of the Mullins case at Parkersburg?

A. It was before that time.

page 495.] Q. Was there at that time any sign of any body having blocked that tree or chopped into it in any way except in making the original corner marks?

A. No sir.

EXAMINED

By the Commissioner.

Q. Were you present at the mouth of Gilbert Creek when Spratt Stafford and some other pointed out the place where it was claimed three marked sugar trees stood?

A. Yes sir.

Q. Describe the location pointed out by *the* with reference to the bank of Gilbert Creek and the mouth of the creek?

A. It was not very far from the bank of Gilbert Creek and just a few poles from the mouth. My impression is it was about at the point as shown on the map R. P. S. filed in this case.

Q. Will you make and file with the papers in this case a map based upon your survey of the mouth of that creek and vicinity showing the location so pointed out and the location of the Crawford corner and a general description of the mouth of the creek and vicinity?

A. Yes sir.

RE-CROSS EXAMINATION

By Mr. Campbell.

Q. You refer to W. E. Justice as being in and out of Robertsons office and of others being in and out at the time you gave your depositions on the second occasion in this case, I now hand you that deposition and ask you to state if the question are not in the handwriting of the lawyers and your answers are not in your own handwriting?

A. Yes sir.

Q. Do you know whether W. E. Justice and the others who were in and out had any knowledge of this case at all?

A. No I do not.

page 496.] RE-DIRECT EXAMINATION.

Q. Was not the case or at least were not the questions and answers discussed or mentioned or talked about at the time the questions and answers were written down as well as being taken down in writing and during the progress of the examination?

A. Yes I think were, I would ask counsel *counsel* questions as

what might be embodied in the answer, or what was intended to be the scope of the question.

Q. Was the large blue print which was made on the same sale as the Stone map spread out where any one could see it and frequently *examine* and referred to in the progress of the examination?

A. I dont remember.

Q. Was there so far as you could discover anything peculiar or unusual or clandestine about the manner in which your deposition was taken?

A. No sir.

Q. Was it taken in any respect differently from what it had been taken upon the first occasion, except that there were more people present?

A. No sir.

And further this deponent saith not.

W. D. SELL.

1 day and 1.00.

page 497-8.] It is agreed between counsel that in order to avoid the necessity of taking the further deposition of S. M. Graham, that the said Graham would if further examined testify that he had surveyed the tract of 1117 acres patented to Shadrach White and John N. Watkins, and the tract of 670 acres at one time owned or claimed, under deed from Estep, by said White and Watkins but surveyed for Estep, and a tract of 502 acres patented to said White and Watkins and that the said tracts are laid down with substantial accuracy on the map filed in conjunction with the testimony of W. D. Sell and marked "Watkins Lands" and that the said 1117 acres and 502 acres are the only tracts patented to said White and Watkins or either of them of which the said Graham has any knowledge or information, in that locality, and that the Coleman or Stuart tract and the May or Lonhart tract and the Estep 127 acres and 33 acres and the *Johathan* Hurley tract are the only aracts of land on Race Fork of which he has any knowledge or in-

formation except two or three little tracts near the mouth of said Race Fork.

The Contesting Defendants having announced that they have closed their side of the case upon the question of location the commissioner thereupon on motion of the contesting defendants proceeded to fix a time certain within which the defendant King shall conclude his evidence upon the said question of location. And it appearing that the 24th. day of January 1903 will be a reasonable limit for that purpose it is ordered that the defendant, King shall between now and the said 24th. day of January 1903, produce such evidence before the commissioner as he may desire upon said question and that the commissioner shall continue his sitting from day to day until said date.

page 499.] The commissioner upon the request of the defendant Henry C. King, in company with C. W. Campbell of counsel for the contesting defendants, and Judge M. F. Stiles Attorney for the defendant Henry C. King, on Monday January 12, 1903, went to the mouth of Turkey Creek in Mongo County, and made observations of said creek at its mouth. And on the following day in company with the same attorneys, the commissioner went to Hurley, Buchanan, County, W. Va. And from there to the stumps claimed as a corner, at the home of Dan Justus on the right hand fork of the Race fork of Knox Creek.

While at the location of said stumps the commissioner had pointed out to him by the attorneys, poplar stumps numbers 1 and 2. The logs lying in the drain below poplar stump number 1 claimed to have formerly belonged to said stump; the remains of the lynn stump; the point claimed as the place where the sugar tree stood; the stump claimed as a beech line there; a sugar tree stump standing some distance north of poplar stump number 1; a cucumber stump some distance away and up the hill from poplar stump number 2; the point claimed as a depression in the ground a short distance, a little East of South of poplar stump number 1; about where the triple lynns are claimed to have stood; the place in the field where the distance ran out in running to said triple

lynn corner; the knoll at the right hand side of the mouth of the little drain where said Dan Justus lives with stumps standing thereon among which was a large white oak stump and a large chestnut stump; and the cribs and stables standing in the enclosed fields at said Justus.

His attention was also called to a white oak and a chestnut tree, and a maple tree with a squirrel hole therein, standing among some timber on a knoll at the mouth on a small drain a short distance below the house of said Dan Justus, on said right hand fork of the creek.

page 500.]

CHARLESTON, KANAWHA COUNTY, WEST VIRGINIA,
Jan. 19, 1903.

Met pursuant to adjournment as agreement between parties.

Present: Judge M. F. Stiles, attorney for the defendant, King.

C. W. Campbell, attorney for contesting defendants.

W. D. SELL, a witness heretofore introduced being recalled by the defendant King, testified as follows:

EXAMINED
By Judge Stiles.

The witness as required by the comimssioner on the 7th. day of January, made and filed with the commissioner on the 10th. day of January, a map of the mouth of Gilbert creek.

Q. On the map above referred to in the note thereon you state that the alleged former creek channel at the mouth of Gilbert creek is laid down as pointed out by counsel for the defendants in the case of King vs. Altizer; who were the counsel that pointed it out?

A. John A. Sheppard.

Q. I understand from this note of explanation that that alleged channel was surveyed out and laid down by instruction as

to where the line should be run, and not from any channel at present appearing, is that the case?

A. It is.

Q. Was there at the time any depression or sag or bottom or other means where those red lines are run that would indicate to you that the creek or any branch thereof had flowed there?

A. There was not.

Q. What was the character of the ground at that place?

A. It was as I remember a bottom and a sand bar.

Q. What is the character of the creek bank at the sharp turn some distance above the mouth and where the word "creek" is written on the map, what do you find at that page?

page 501.] A. The hill side at that point is exposed rock coming down at a steep angle to the edge of the water.

Q. Does the rock make the same bend at that point that the creek makes so as to form the bank of the creek some distance below the turning point?

A. It does.

Q. Does there appear to be along the bottom on the west side of the creek opposite or near the figures "835.92" or in that neighborhood anything to offer a special obstruction to the course of the creek, such as might shoot the current of the creek to the right in the direction indicated by the red lines and claimed to be the former channel?

A. There is not.

Q. How long have you been acquainted with that locality?

A. Since the summer of 1891.

Q. At that time how did the channel of the creek and creek bed from the mouth of the creek as you found it at that time up to the alleged old channel compare in appearance with the channel and bank of the creek from that point up to the bend in the creek, was there or not anything to indicate a difference in age between the two portions of the creek channel?

A. There was not.

Q. While surveying in that neighborhood or at any other time did you notice any large timber along the west side of the creek

bank below the point of alleged departure of the creek into the alleged former channel?

A. Below the point of departure of the alleged former channel along the west bank of the creek, nearly opposite the point "ZZ", is a row of elms, the size of which I measured, and one of which I remember was 41 inches in diameter, that being the one nearest the mouth of the creek; then extending up the creek the sizes run 28 inches, 28 inches, and then there was a row or about fourteen, that run from 28 to 34 inches in diameter.

Q. If you can, indicate on the above mentioned map, the position or approximate position of the trees referred to?

page 502.]

A. As I remember those trees were located between the points "A" and "B" on map on the west bank of Gilbert's creek.

Q. Were the roots of the trees exposed as is usual with trees standing along the water line of a creek or river?

A. The roots were exposed along the rounded bank, and had been washed and bruised by the debris that the stream had washed down.

Q. Did that exposure have the appearance of being recent or had the trees apparently accommodated themselves to that condition through the period of their growth, so far as you could judge?

A. The trees had accommodated their roots to the bank as they had grown.

Q. Can you give an idea of the age of elm trees ranging from 28 to 41 inches in diameter?

A. Yes sir, I think that a tree 28 inches in diameter would be not less than one hundred years old, and one of larger diameter of course would be still older.

Q. About what is the area of the bottom west of Gilbert creek?

A. About five acres.

Q. Have you in your profession or business had occasion to examine or become acquainted with the title and claims of titles of persons in Logan County and in what was Logan county as far back as 1858, and to know where the lands claimed by them or some of them were situated?

A. Yes sir, to a certain extent, not so much by way of examination of titles as in the way of investigation as to where the original patents lay.

Q. I hand you a copy of the declaration of Josiah Randall vs Evermont Ward and others and ask you to see whether you know any of the defendants in that declaration, claiming lands lying west of what in this suit has been called the Gilbert creek line, that is, west of Gilbert creek and Turkey creek?

page 503.] A. Contesting defendants object to this question because immaterial and otherwise improper.

A. Yes sir, I recognize some of the parties named as defendants as holding lands west of said line.

Q. Please name some of them?

Contesting defendants object to this question because it is immaterial.

A. Mark Dempsey, Andrew Dempsey, and Charles E. Dingess on Island creek; Eli Gore on Guyandotte river just above Logan Court House. Ulysis Hinchman on Guyandotte river; Cummings Music on Pigeon creek, and Stephen McDonald on Huff creek.

Counsel for defendant King offers in evidence the paper referred to, being a certified copy of the declaration of Josiah Randall vs. Evermont Ward and others, filed in the then district court of the western district of Virginia at Charleston.

To the filing and consideration of which as evidence the contesting defendants object.

CROSS EXAMINATION OF THE WITNESS
By Mr. Campbell.

Q. Who was present besides Mr. Sheppard when you did the surveying on the ground at the mouth of Gilbert creek for the plat which you have made and filed?

A. There were quite a number of people present whose names

I do not recall, but I do know for sure, Pat Spratt, Alexander West, and Dock Stafford.

Q. In what month did you do that surveying?

A. It was in August, 1895.

Q. Did you make any investigation other than observing surface indications as to whether Gilbert creek formerly entered the river about where you have put down the red lines on the plat filed?

A. I did not. The red lines as stated by me were located under instructions from John A. Sheppard, by that I mean, that he was assisted of course by other parties then and
page 504] there present with him.

Q. Did you take any note of the location of the walnut stump and the sycamore tree as indicated on the map filed and marked "R. P. S.?"

A. Yes, I did.

Q. Why were they omitted from your plat?

A. In the making of the plat filed with the commissioner I endeavored to conform the actual ground and appearance as it would be viewed by any one at the present time without noting on the map anything that might be improper, and in that view in the making of the map I thought I was doing the proper thing, especially since Judge Stiles advised me that he was going to recall me with reference to that map, and I knew if anything was omitted that attention would be called to it on the re-examination. The matters that were not put on were matters noted on the R. P. S. map, such as the walnut stump, the sycamore tree, etc.

Q. When you were there did you note the location of the Isaac Spratt house now occupied by Dave Trent?

A. No sir.

Q. Did you note the foot of the hill on the ast side of Gilbert creek?

A. No sir.

Q. I believe you have stated heretofore that you found no corner trees of the Crawford survey standing?

A. I so stated.

Q. That the beginning corner was pointed out to you by some of the citizens, or by Lee Ellis the owner of the land?

A. Yes sir.

Q. At what angle does your line on the Stone map between "A" and "P" cross Tug river above the mouth of Little War Creek?

A. At the point of crossing it is almost a right angle.

Q. How far is that above the mouth of War Creek?

page 505.] A. The corrected line crosses Tug river at 1380 feet, above the mouth.

Q. What do you mean by the corrected line?

A. I mean the direct line between the points A and P.

Q. How does the river run in approaching and departing from the mouth of Little War for a distance above and below that point; in other words, is the location of the river at the mouth of Little War creek and for some distance above and below correctly delineated on the Stone map?

A. It is.

And further this deponent saith not.

W. D. SELL.

page 506.]

WESLEY MOLLOHAN, a witness introduced on behalf of defendant King, after being duly sworn testified as follows:

EXAMINED

By Judge Stiles.

Q. State your age, residence and occupation?

A. I am in my sixty-second year; residence, Charleston, Kanawha county, West Virginia; my occupation, attorney-at-law.

Q. Have you during your practice of the law tried many land cases involving an examination of line and corner trees and other marked trees, and if so, to what extent?

A. I have been engaged in the practice of the law since June, 1865, and I have made a specialty of land cases and particularly cases involving the question of boundary. I have had a very considerable experience with surveyors in tracing and hunting old lines and as well younger lines, in the examination of standing trees as to marks and in blocking of marks, counting the annulations in the blocks so as to ascertain the ages of the marks; I have examined a great many blocks in cases which have been taken by surveyors from trees and filed in the cases at the blocking of which I was not present. I could not with any certainty indicate the number of cases which depended largely upon the boundaries, but they have been very numerous, I should say at least forty or fifty.

Q. Did you ever have any experience or practice as a surveyor, and if so, state to what extent and under what condition?

A. I can run a compass and have surveyed parcels of land myself; and I have been a great deal with other surveyors on the survey of land and have run the compass myself. My experience in this has been considerable. My father was a considerable owner of West Virginia lands; he frequently had surveys made of them and I generally acted as chainman; I commenced to carry the chain on such surveys when I was a boy nine or ten years of age. I commenced the practice of land cases very soon after I came to the bar, and that has continued almost constantly from

page 507.] that time to this.

Q. Over how long a period of time did your experience as a chain carrier or surveyor's assistant extend?

A. Very soon after I came to the bar I acquired certain lands in connection with others; I superintended all surveys in connection with these lands, did much of the running myself on them. Along in the early part of the seventies I was engaged as counsel in a block of land suits involving the location of the Skyles 40,000 acres. The questions in these cases were wholly questions of location; it involved the location of the lines of the Skyles 40,000, the Barclay 50,000, the Steele 19,000, the Steele 27,000 and the Morris surveys on Kelleys creek. Mr. John L. Cole was selected by the

defendants to most of the suits and directed to make thorough surveys of the lines of all these surveys so far as they bore upon the question of the location of the Skyles. He spent possibly three or four weeks on this work and I was with him in the field most of the time. We ran what were considered the lines of the Skyles in part, parts of the lines of the Steele 19,000, the Barclay in part and in part the Steele 27,000, and parts of the Morris. We ran and re-ran many of these lines and kept a constant examination for marks, blocked trees old and young in great numbers; our main object was to fix the location of these lines upon the ground by marked trees if possible; our examination involved timber on these lines and off of the lines, in fact it was a general hunt for timber by which we could settle and fix the lines of this survey. Sometimes I did the running in the field and sometimes Cole did it. In addition to our blocks Mr. A. P. Sinnett did much running for the opposite parties on this survey with the same object and purpose and blocked numerous trees, and they were used on the trial of the cases in connection with ours. There was an action of ejectment pending in the circuit court of the United States at this place involving the boundary of a lot of lands in Nicholas

page 508.]

county; it involved the location of the block of surveys known as the Young block on the south side of Gauley river; of the Steele, a Staples, a Hudson-Martin of some 9,000 acres, a number of surveys known as the Moore and Welch, and parts of the lines of the Hudson-Martin survey of something over 100,000 acres. It was wholly a question of boundary. The Young block was made in 1790, and the others in periods ranging some five years after that date. I first worked on these lines with Mr. S. P. Shindel, the surveyor of Nicholas county, as a private surveyor. I then worked on them with Mr. John Hutchinson, an old surveyor residing in Nicholas county. I then attended an official survey made of the lands by A. B. Sinnett under order of the court. I then went back and in connection with Mr. Hutchinson made surveys of sundry and divers lines on this survey and then returned and attended an official survey made upon the same by Mr. Shindel. Our work was almost entirely in the ex-

amination of timber for marks, and blocking and counting the ages of the blocks: Since that I have done considerable work on the lines of the 153,000 Hudson-Martin in order to locate its lines in controversies with adjacent land holders between Cranberry and Cherry rivers and above Cranberry river. I have done a great deal of work on other old surveys in investigations of the same character in order to locate their lines and in some instances have run the lines myself and made such examination. I have been with surveyors in controversies of the same kind on other surveys involving the lines of the Gallatin surveys and the Wilson survey along the Kanawha river and on work on the Elk River, and have been called upon a great many times to examine blocks and corner marks on trees and give my opinion as to the ages of the blocks. I know many of the old corner trees standing in sections of the country in a large scope of territory; in fact I always take an interest in such matters.

page 509.] Q. Has your experience such as you have related involved the examination of recent surveys, trees recently marked as well as trees marking the boundaries of the ancient surveys?

A. It has. I have been along and helped to do a great deal of work on what are known as the junior surveys and on surveys made by the commissioner of forfeited and delinquent lands, and on lines of other surveys made in recent periods.

Q. Have you examined the poplar black offered in evidence in this case by the contesting defendants as the block taken from a tree standing about three-quarters of a mile west of the corner of the grant involved in this case, known as the four white oaks, and now exhibited to you?

A. I have examined two pieces of poplar wood which have been shown to me and are now present; these two pieces of wood have been sawed apart and have two marks on them, and have been sawed apart through the marks; one piece has two wooden pins in it and the other two holes, so that they can be placed together to restore the appearance of the block before it was sawed.

Note by the *commissioner*: The block referred to by the witness

is the one filed with the commissioner by the contesting defendants and described in the last question of Mr. Stiles.

Q. I will ask you to give your opinion as to the approximate age of the marks in the block referred to, and the matters upon which you base your opinion?

A. I have examined the block or the two pieces of the block carefully with my eye and also with a glass, the block, the pieces of the block and the hacks in the block. My opinion and conclusion is that the hacks are not what are known among surveyors as "old hacks," that is, hacks made along about the beginning of the last century or a few years previous to said beginning; a mark in a tree changes as time progresses after the mark is made; if the mark went into the wood or reached the inner part of the bark, that

page 510.] is, struck what is known as the vitality of the tree, the sap passes out through the hack and for some years will gather in the hack; the hack will show the coagulation of this vital matter, and after many years the wound will heal and this vital matter will cease to pass out into the hack and the tree will throw off this vital matter accumulated in the hack and there will be no appearance of it in the hack. One of the hacks in this block evidently reached the inner part of the bark. Time will also change the appearance of the hacks and diminish its prominence in the bark. This mark has too crude and prominent appearance to have existed for a period of one hundred years.

Q. On this block through the line of cleavage there is disclosed a dark line and a discoloration underlying the hacks in the bark, I will ask you to state what if any significance that has?

A. I find no sign of an ax mark in the wood: This evidently shows that the instrument never reached the wood, but the bark indicates quite clearly that the instrument reached the inner bark, as in the bark itself there are lines or seams which could only have existed in the bark in case the instrument had reached the vital part of the bark. When an ax mark goes into the wood, or goes to the vital part of the bark, it will obstruct the flow of the sap, and the dead matter, owing to this congestion of the sap, generally shows itself in the wood in connection with the hack and each annula-

tion in the tree will throw itself over this congested matter whether it arises from the wound in the vital part of the bark or in the wood, and the annulations on the outside of this congested portion indicates the part of the tree which has grown since it was made. Under one of the hacks there is a depression in the wood immediately under the hack; this arises evidently from the obstructed circulation of the sap at that point. I have noticed in my examination and now see the dark line indicated in the question, which is between an inch and a half and an inch and a quarter below the outer line of the wood; an appearance of this kind in wood has a cause, and my judgment is that it is the result of the hacks in the bark of this tree, and it arises

page 511.] from the obstruction created by the instrument in the inner bark, that is, it arises from the obstruction of the flow of the sap and the dead matter accumulating from the wounding of the inner bark. It extends practically between the two hacks and very little beyond either. In sawing the block it has been left practically the full length between the hacks in one section of the block, and in the other in the sawing for a portion of the distance it was sawed entirely into the other piece.

Q. State whether or not that line in your judgment corresponds in position with the place where the hack would have been found in the wood of the marking instrument had penetrated to the wood?

A. My opinion is that this black seam indicates the time in the growth of the tree when the marks were made, and that the annulations between the outer edge of the wood and the black seam will indicate the year when the hacks were made. On the outer edge of the wood there is a black irregular line. This probably arises from the same cause, as the marks having wounded the tree disturbed its circulation, destroyed the regular course of nature in the tree. The wood appears to be dotey in consequence of this fact in the wood beneath the hacks.

Q. Have you counted the annulations from the black line upward as indicating the growth of the tree since the making of the

marks and the consequent lapse of time since the marking, if so, state what you have found?

A. I have tried to count it; the block is not in such condition as it should be to make anything like an accurate count and the count made by me is merely approximate. The annulations above the black streak as I best could count them, although I must say that I have not tried to count them with a great deal of care, are about forty-or forty-two years.

Q. In your judgment could the marking on that block exceed forty-five to fifty years?

A. My opinion is that the annulations between the black streak and the outer edge of the wood indicate the
page 512.] time when the mark was made in the bark whatever annulations may be.

Q. You may state whether in the course of your experience such as you have detailed you have learned when the practice of marking side lines appears to have been adopted?

A. I have never seen a side line mark over forty or fifty years old, and older surveyors have informed me that the custom of marking side lines originated about that time; I have never seen a side line tree on the lines of the old surveys.

Counsel for contesting defendants moves to strike out the portion of the answer of the witness relative to what surveyors have said.

CROSS-EXAMINATION

By Mr. Campbell.

Q. Which hack is it which in your opinion disturbed the vital part of the bark?

A. The one next to the slanting end of the block shows most strikingly that it did so.

Q. Did the other hack in your opinion reach the vital part of the wood or bark?

A. It may have done so, but I am not able to say that it did, though the length of the black seam would to some extent show that it did so, but I am confident from the appearance of the

block that the one next to the slanting end of the block did reach the vital part of the bark.

Q. Is not the wood underneath the black streak just as dotey as the streak of wood between the black streak and the bark?

A. My opinion is that it is not.

Q. Is it not dotey?

A. It shows the appearance of age in the tree, but it does not show so much the irregular character of the wood, as it does between the black streak and the outer part of the wood.

Q. Is it not more or less dotey than the black streak for as great a distance or from the block streak to the bark, and that too for the full length of *of* the block?

page 513.] A. I think not?

Q. Is not the dote greater in the upper hack and for a distance twice as great as that in the lower?

A. At each end of the black streak there is some indications that the wound has effected the wood to some extent both above and below the black streak, to that extent it appears doted and has some appearance of the same at the other end of the black streak.

Q. How do you account for the presence of the line of demarkation beneath the black streak about one and a half inches and for the full length of the block?

A. That is frequently found in popiar timber and indicates periods in its growth; it might be called a section line in the formation of the wood.

Q. Is the black streak anything more than that?

A. I think it is. The other streak below the black streak practically extends the whole length of the block; the other has only a limited extent; it practically extends between the two hacks.

Q. How wide ought that black streak to be, measured around the tree?

A. It ought not to extend any great width around the tree; it will show itself less as you depart from the line of the hack and the extent of this departure and its extent in appearance depends to a very considerable degree upon the period of the year in which the hack was made.

Q. Would you expect to find it extending around the tree as much as two inches at all events?

A. I would hardly expect it to be found extending around that distance, though it might do so. It would extend around the tree as far as the circulation of the sap was obstructed by the wound and probably a little beyond.

Q. Can you tell how wide around the tree this black streak should be?

A. I could not. It would depend upon the facts above stated.

Q. Can you count the annulations between the depth of the hacks and the outer wood, and does it determine the number of years which have elapsed since the hack was made?

page 514.]

A. No. The seams that appear in the bark were at the time the inner part of the bark, and that is what develops so strikingly the seams in the outer part of the bark.

Q. Do you mean to say that the hacks did not pass through the bark and into the place where the sap passes between the bark and the wood?

A. That I cannot say; it went to the inner vital part of the bark next to the tree, but whether it went entirely through it I cannot say. There is no indication from the block that it went into the wood.

Q. What do you mean by the vital part of the bark, do you mean the last annulation of the bark made by the sap of the previous year, or do you mean the last two, three, four or more of such annulations?

A. There is life in the wood and there is life in the inner part of the bark, and the annulations are made up by this sap passing between the bark and the wood and becoming solidified into wood in all exogen out trees, and if you cut into this inner bark and wound it if the sap is then on it will flow out through the hack; or if it not then on, but comes on soon afterwards, it will flow out to a large extent if the hack is made just before the sap comes on; but if the hack is made after the sap has gone down, the sap

thereafter will not flow out to the same extent as in the other cases.

Q. I would like for you to state how many annulations of the bark lay between the extreme inner part of the hack and the wood?

A. That I cannot do.

Q. How far out does the vital part of the bark usually extend from the wood; in other words how many annulations of the bark are alive?

A. The extent of the live part of the bark depends to a very great extent upon the character of the tree.

Q. Is it not a fact that the sap passes entirely between the wood and the bark and does not pass up through any annulation of the bark, and would not the hack have to penetrate that space before there would be any escape of the sap? [page 515.]

A. I do not so consider it.

Q. Suppose that the further splitting of this block should disclose that the black streak does not extend over one half or one-quarter of an inch around the tree, what would you then say was the probable cause of that black streak?

A. The hack. It would extend less around the tree from the hack if it merely touched the vital part of the tree than if it had gone into the tree, because if it had gone into the tree necessarily the hack would have been of greater width in the bark, that is, if the hack passed only through the bark into the inner edge the hack at its bottom is very limited, but if you cut so as to go into the tree, the cut is wider and extends further around in the bark.

Q. Looking at these hacks, how much of the vital bark was cut in either of them?

A. That I cannot tell; if the hack did not go into the wood it would indicate that the width of the hack in the vital bark was not great; otherwise if it was broad in the vital bark, it would necessarily have had to cut the wood; this arises from the fact that the tree is round.

Q. Did you ever see and examine the poplar block taken from the alleged beginning corner of the Morris survey in this case?

A. I have some recollection that somebody once casually showed me what they said was that block or part of it; my examination of it whatever it was was very casual, and I could not now state the result of it.

Q. Did you see the block taken from that supposed corner by Sid Stone, surveyor of Logan county in company with T. J. Matthews of Kanawha county, along in 1895 or

page 516.] 1896?

A. I have some recollection of Matthews and Stone's name in connection with it I think.

Q. Did you ever see the block taken out by Captain Matthews in 1884?

A. I may have seen it, but I do not now remember anything about it.

Q. Are you now or have you been in the past in the employ of Henry C. King as counsel in any of the King cases?

A. I once as a mere favor to Judge Stiles prepared a petition for the rehearing of a decision which had been rendered by the court of appeals of West Virginia in a school commissioner case from Wyoming county involving the question of redemption, and took some part in the oral argument of the case in the court of appeals, and I believe looked over and possibly suggested something to a petition for rehearing in a case that was in the Supreme court of the United States, and my recollection is signed the petition. I never charged any fee for any of these services, never expected any. I had some clients interested in some questions that were involved in the case, that is in the rehearing case, who might be affected by the decision, and this and mere accommodation to Judge Stiles caused me to aid him in the preparation of that petition. I am not counsel now in the King case or any of its branches; so far as I know have no interest in it.

And further this deponeth saith not.

WESLEY MALLOHAN.

JAMES A. HOLLEY, a witness called on behalf

page 517.] of defendant King, after being first duly sworn, testified as follows:

EXAMINED

By Judge Stiles.

Q. State your residence and occupation?

A. Charleston, Kanawha county, West Virginia: My present occupation is dealer in coal and timber lands.

Q. What, if any official station or position have you occupied during 1898, 1899 and up to the latter part of the last year?

A. From January, 1898, to November, 1902, I was clerk of the Supreme Court of Appeals of this State.

Q. Do you remember the time when application for appeal in the present case of State of West Virginia vs King was made and the appeal allowed?

A. I do.

Q. By what counsel was that application made, state what you know with regard to the matter?

A. The petition, as I now remember, was in the name of the State of West Virginia, and the counsel as I remember, Were General E. P. Rucker, Campbell, Holt & Campbell, and probably John A. Sheppard was connected with it, I think he was.

Q. By whom was the transcript of the record and petition for appeal brought to you after the appeal was allowed?

A. The petition was filed at the time and turned over to me as clerk; I do not remember who pesented the petition to the court, but immediately after the appeal was allowed, or some days thereafter, Mr. Holt, of the firm of Campbell, Holt and Campbell, directed me to have the record printed at once, and at the same time stated that if the State did not pay me for the printing of the record, that he would see that I was paid or received my fee for printing.

Q. Do you remember the entering of the final decree after the rehearing by which the decree appealed from was reversed in part and affirmed in part?

page 518.] A. I do.

Q. By whom was that decree prepared?

A. Part of it was prepared by myself and part of it by

Judge Dent, Judge Dent prepared the substantial part of it and I prepared the formal part.

Q. Do you recall whether attorney general Rucker examined the draft made by Judge Dent and yourself at or about the time it was entered, and if so, what he had to say about it?

A. General Rucker came in I think it was a few days after the order was entered and approved by the court and read it from the order book; he stated that the decree was all right, that he could not see any particular objection to it.

Q. Did any one else make any question about the decree as to its being erroneous or improper, if so, what so far as you know was the complaint made?

A. I don't think there was any complaint made during that term of court, but after the term of court closed, I heard the decree spoken of by different parties, but I do not remember of any motion being made for the correction of it; there may have been, but I do not recall it if there was. Judge Harvey talked of taking such action, but I do not now recall whether the same was done or not.

Q. Do you remember who participated in the oral argument of the case?

A. I am not sure that I recall all the attorneys, I thing that General E. P. Rucker, James Brown and John Holt appeared on behalf of the State, and Stiles and Flournoy for King.

CROSS EXAMINATION.

By Mr. Campbell.

The contesting defendants move to strike out as immeterial and inadmissable the whole of the evidence of this witness, and without waiving that motion proceeds to cross-examine the witness as follows:

Q. Did Holt pay or cause to be paid to you the fees for

printing the record in the cause of the State vs. King and others?

page 519.] A. No sir, he did not.

Q. Was Mr. Holt or Mr. James E. Brown either present when the final order was entered in this cause?

A. I think not.

Q. Where did James E. Brown at that time live?

A. He lived in the city of Charleston.

Q. Within how many squares of the Supreme Court room is his law office?

A. About three squares I think.

Q. Had the term adjourned when General Rucker saw the decree on the record book?

A. I think not, sir.

Q. How soon did court adjourn after he saw it?

A. That I cannot answer. He came in and looked at the order as I remember now within a few days after it was entered, probably the next day.

Q. I believe it was your custom as clerk of that court to send out postal cards to the attorneys engaged in a case notifying them of the courts opinion was it not?

A. Yes sir.

Q. Did you not in this case notify the firm of Campbell, Holt & Campbell by a postal that the decree of the court below had been reversed and opinion by Judge English?

A. I do not remember as to this; Mr. Ray who was then my assistant always attended to that part of the duties, and I presume he sent the postals as usual giving the decision of the court.

Q. When the opinion was handed down by Judge English and also an opinion by Judge Dent, did not both of the Judges announce in open court that the decree of the court below was reversed and the case remanded?

A. I could not say positively as to that, but I presume that would be their announcement.

Q. Do you know of any attorney engaged in the case after that announcement by the court, appearing and asking for
page 520.] or arguing for a decree reversing in part only the decree below and affirming it in all other respects?

A. I do not think such application was ever made in open court, though it may have been.

Q. Was it not made to one or more of the judges off the bench?

A. I will say that soon after the opinion was handed down that I was informed by the members of the court that Judge Stiles and General Rucker both appeared before them in chambers or in their room, and insisted upon some change or correction of the final order in the case.

Q. Were you present at any time when Mr. Flournoy was belaboring the judges or any of them to have a *particual* decree entered in that case?

A. I do not remember of being present.

RE-DIRECT EXAMINATION.

Q. Was it not your custom to send out postal cards as referred to announcing the result of cases very shortly after the decision was announced from the bench and without waiting until the decrees were finally entered up?

A. Yes sir, it was. Immediately after the decisions of the court were announced these postal cards were sent out, and sometimes it would be as much as four or five days before the orders would be entered; the court would frequently adjourn from Saturday to Saturday, which would give me the whole week to have such orders entered.

Q. Was your understanding and agreement with Mr. Holt concerning the costs of printing such that if the costs had been charged against the State that he or his clients would have been answerable to you for any difference between the actual cost of printing and the rates allowed for the State printing; in other words did you in any event look to him as security for the printing or part of it?

A. Yes sir, the State contract for printing was less than my fees charged for printing, and I told Mr. Holt at the
page 521.] time in the event the State would not pay me full seventy-five cents a page for printing, or if the State refused to pay me the whole of the bill for printing, would he see that I was paid the full seventy-five cents a page for the printing, and he said he would.

And further this deponent saith not.

J. A. HOLLEY.

page 522.] Resumed proceedings this the 21st. day of January 1903, at the office of the commissioner in the city of Huntington, West Virginia, pursuant to adjournment.

PRESENT: C. W. Campbell and Edward C. Lyon attorneys for contesting defendants.

Judge M. F. Stiles and Judge W. W. Marcum, attorneys for the defendant H. C. King.

V. A. WILDER, a witness introduced by the defendant H. C. King after being first duly sworn upon oath testified as follows.

Examinaed by Judge Stiles.

Q. State your age residence and occupation?

A. Age 58 years, residence Warwick, New York, occupation business man.

Q. You are an agent and representative of the defendant King I believe?

A. Yes sir.

Q. How long have you been such?

A. Since 1893.

Q. Did you have anything to do with the purchase by Mr. King of the Morris grant so as to know what was paid by him for the same, if so you may state?

A. I was present during all the negotiations prior to the purchase of the land and was present when the payments were made, if I recall correctly there was paid $500,000.00 in first mortgage

bonds of the Monterey and Mexican Gulf Railroad, and I think $16000.00 in cash in the way of taking up a mortgage, or some kind of a lien on the property, held by Kountz Brothers, of New York, the money being paid to them I think. I could refresh my memory by going over my previous evidence, although I think these figures are correct.

page 523.] Q. What was the length of the Railroad referred to and the face value of the bonds?

A. I think the railroad was about 460 miles long; the bonds had sold from sixty-five to eighty five cents on the dollar. The bonds were $1000.00 bonds.

Q. At the time of the purchase did Mr. King know so far as you are informed that the land was claimed or supposed to be forfeited to the State for Non-assessment or taxes.

Objected to by contesting defendants.

A. He did not.

Q. About what time did you come to West Virginia to look after the property and what did you find the stituation to be with reference to the the claim of forfeiture and what steps did you take towards adjusting the matters of taxes in West Virginia?

Objected to by Contesting defendants.

A. I think I came to this country in 1893 to take charge of the matters with reference to this land. I had been led to understand, as with Mr. King and others connected with the property, that there were certain unpaid taxes amounting to something like $3000.00 or $4000.00 and that it was a mere clerical matter as to how they were to be paid and the exact amount to be computed. I came here prepared to pay whatever was found to be due in the way of taxes. At first I had very little personal connection with the officials of Logan County, leaving the matter mostly with Judges Stiles and Mr. Howel. who were then with me—Mr. Howell was a party who appeared in the negotiations in New York as one who was acquainted with the land and with all matters connected with lands in West Virginia. He had, I understood, run out this land, or

helped survey it, and while he was more of a representative of the parties selling the land we still consulted him on certain matters and accepted his representations. It was he who informed me largely with reference to the arrears in

page 524.] taxes. Matters *didnt* go quite fast enough to suit me and I began to enquire more closely myself about these matters. Judge Stiles in the meantime, of course had informed himself about it, but as the matter was a mere business proposition to me, I *hadent* informed myself very closely as to the law in the matter, all that I wanted to do was to pay the taxes and I *couldent* understand why I *wasent* allowed to do it. I then became informed of the fact that there was a forfeiture law in this state and that it was claimed that under that law this land was forfeited to the State of West Virginia. I found that a man by the name of Burskirk was the Commissioner of School Lands and that Mr. John A Sheppard or his firm, of Sheppard & Ellison, I think it was, had charge of the proceedings brought by the State to sell this land. I myself, never had many conferences with them as I recall, but in a business way I went to work to see what was necessary to be done in order to get the taxes paid and to ascertain just what King's right were. The further I went in the matter the more confused the thing seemed to be. I *couldent* pay the taxes, I *couldent* redeem the land, if it was forfeited, and I finally got to the point where I understood that if King would forego all claim, or assertion of claim, to any land out side of what Mr. Sheppard called the Gilbert Creek line it might be possible that King would be allowed to pay up taxes, or redeem, whatever the case might be, for such land as he might be able to set up claim for inside of the so called Gilbert Creek line.

Q. Did you understand that even tha. possible permission to redeem would be extended to any land within the so called Gilbert Creek line that had been sold by the Commissioner of School Land under void sales, or that was otherwise claimed adversely to Mr. King.

Contesting defendants object to the question and move to strike out the previous answer of the witness.

page 525.] A. I understood, as a matter of fact, under the *rullings* of Mr. Sheppard, that King practically *wouldent* be allowed to redeem a foot of land even within the so called Gilbert Creek line, since most of it, if not all of it, had been sold in some way or other. For a year or so we pursued the policy of trying to pay our taxes and get a redemption of the land, but at every point we were met with a united opposition which effectually stopped us in any proceedings whatsoever in the state court; unless we would abandon every claim pretty much Mr. King had. We then commenced proceedings in the United States Courts with the hope of reaching some adjustment of the matter in that forum.

Q. By proceedings in the United States Court do you refer to actions of ejectment against various adverse claimants?

A. Yes sir. And by injunctions obtained in that court to prevent the removal of timber from the land.

Q. Did you at any time during the efforts you have mentioned to effect an adjustment of the taxes make any attempt to improperly influence Mr. Sheppard in his conduct of the case or cases pending in Logan County Circuit Court or did you know of any such effort or attempt being made in Mr. King's behalf?

A. No sir I never did, and I never knew of any such *atempt* being made by any one in Mr. King's behalf, or in behalf of any persons associated with him. I *dont* think that I ever spoke a half dozen words to Sheppard, barring one *occassion*, other than the mere passing of the compliments of the day, from the time I first knew him until the present moment. I never to my recollection had any conversation other than the ordinary compliments of the day with Mr. Buskirk, the Commissioner of School Lands, and for this reason; I made up my mind quite early in the history of the case that there was some-

thing in the relation of these two *gentlemen* beyond their official connection with the case which I *didnt* understand; parties came to me and told me I ought to come to some understanding with Sheppard and Buskirk and the way would be smooth.

[page 526.]

Contesting defendants object to the last statement of the witness and move to exclude it.

Witness resuming. By that I understood that the arrangements sought was a corrupt one.

Contesting defendants move to strike out the last expression of the witness.

Q. Did Mr. Buskirk, the Commissioner of School Lands, during the pendency of the proceedings refered to in Logan County, *ingage* in any timbering *operations* upon the lands claimed by Mr. King and to which he asserted title in said proceedings, and which he wished to redeem from forfeiture, if forfeited, or at any rate to pay the taxes?

Objected to by the contesting defendants.

A. Yes he was very largely engaged in getting timber off the lands claimed by Mr. King and which King wanted to redeem. The fact is, as I observed in a business was, one day Mr. Buskirk was Commissioner of School Lands, and the next day he was a depredator of timber belonging to Mr. King, and whether he was commissioner or getting timber, as I understood illegitimately, was so confusing to my mind, I *couldont* tell what he was; and that seemed true to me of Mr. Sheppard also, he seemed to be representing the State one day and the next day some private interests, or possibly his own, as in the case of the McClintock timber on Buffalo Creek.

Q. Did Mr. Sheppard or any other representatives or officer of the state take any steps to prevent Mr. Buskirk from spoliating the land claimed by Mr. King and which was involved in the suit in which Mr. Sheppard purported to represent the state?

Objection by contesting defendants.

A. I never knew or heard of Mr. Sheppard or Mr. Buskirk

or any other officer of the state attempting to in-
page 527.] terfere with or to restrain any one of the many people who combined to strip the land of timber, but on the contrary they appeared to exert every influence for their protection, whether the timber came off of school lands, patent lands or so called vacant land.

Q. Mr. Shepard is his testimony in this case spoke of being counsel for Mr. Buskirk in an injunction suit brought by Mr. King against Buskirk to restrain the cutting of timber; was that cutting done during the pendency of these proceedings in Logan County in which Mr. Sheppard appeared as counsel for the state, and was that the same trespass on the part of Mr. Buskirk that you have already referred to?

Objected to by contesting defendants.

A. Yes sir.

Q. Where was that timber being cut and to what extent?

A. I think that was the Rum Creek timber and if I remember right, it was on about eight or nine thousand acres of land —it was a very large body of primeval timber.

Q. After the suit of State vs. LeMoyne, in Logan County, being the proceeding particularly referred to, was dismissed and the suit instituted by the State in Wyoming County, did you know of any attempt by Mr. Sheppard or other persons to dismiss or delay the proceedings in that court and if so, whom do you remember as being connected with *suit* attempt?

Objected to by the contesting defendants.

A. Yes there was a persistent attempt on the part of every body that I designated in my mind, as the crowd that were fighting us, to dismiss the proceedings there and to delay by resort to every device known to lawyers. Mr. Sheppard, Mr. Turley, Mr. Ellicot, Mr. Belknap, I think, and *prominantly* above all of them on one or two occasions, Judge Duke, counsel for Kountz Brothers; Mr. Campbell, of Campbell & Holt. I remember only indistinctly as being there

page 528.] Q. Do you remember my being present and resisting the motion of Mr. Campbell, at any time?

Q. My memory of Mr. Campbell's presence there was to the effect that he argued a motion before the court to send the case back to rules on account of some defect in the notice of publication and that Judge Stiles resisted this motion, and my memory is that on the evening after its argument in court, that a special session of the court was held in the evening, in the parlor of the hotel, at which Mr. Campbell was present, and all the other attorneys, when the state attorney—Mr. Childers, requested the court to send the case back to rules. I will say that if Mr. Campbell says he was not there I would have no hesitation in saying that my memory is at fault and that his memory of it would be the correct one.

Q. Do you know whether Mr. King was prepared to file an answer in that case at any time of the successive terms before he did file it and whenever the state should get its bills matured for answer?

A. I know that Mr. King was ready and anxious on several occasions prior to this one to file his answer in the case, and was ready the first opportunity presented.

Q. By prior to this one do you refer to the time when his answer was filed?

A. I refer to the session of the court when Campbell was present I only know in a general way that Mr. King was very anxious to get his answer in at the first moment possible.

Q. You have spoken of Mr. Howell in connection with this land *alud* as representing the *seling* parties, did you make any examination of the land with him before the purchase was made, if so you may state what you did?

Objected to by the contesting defendants.

A. Before the negotiations were closed finally for the purchase of the land there was a negotiation up for
page 529.] purchase of the southern portion of it, I came to Williamson, West Virginia, with Mr. Howell for the purpose of going over the land and making a casual inspection of it. From Williamson, West Virginia, we went to preacher Hatfield's on Blackberry, Creek Kentucky, and from there we

went to Colemans, on Paw-Paw Creek, a branch of Knox Creek. Going up from Peter Creek over on to the head of Paw-Paw, Mr. Howell showed me, I should judge about two thirds of the way up the mountain, the spot where he said the western boundary of the survey ran.

Here contesting defendants move to strike out what witness said Howell told him.

Witness resuming:—He said he had run the survey on one or two *occassions*. We stopped at Coleman's that night and went down Paw Paw to Knox Creek and up Knox Creek, I think as far as the four white oaks. He had previously on coming down on the train of the Norfolk & Western Railroad indicated from the car about where the eastern line ran on Tug River. On returning from the four white oaks we went down to the mouth of Knox Creek, stopped at Sansoms house, I think.. The next day I think we went up Beech creek a little way below the mouth of Knox Creek. He described to me there about where the western line would cross the Tug River. We wene up Beech Creek and stopped at a parties by the name of Hatfield and we there spent the night and looked at some coal. He described to me there how this coal was dipping and its general character, geographically and from there I forget whether we went to Logan Court House or returned. My impression is now that this man instead of living on Beech Creek, lived on Pigeon creek and we crossed over; at all events we went over onto Pigeon Creek as I wanted to get some idea of the coal in that part of the country.

Q. Did Howell indicate to you whether or not the line of the tract crossed Pigeon Creek.

page 530.] Contestants object to the question and here move to exclude all of the former answer of the witness that relates to what Howell said or did.

A. He indicated to me that the line crossed Pigeon Creek some distance west of where I wsa.

Q. After the trial of the actions of ejectment in the United States Court at Parkersburg, in December 1895 and January 1896

were you actively or continuously engaged in looking after these land affairs in West Virginia until proceedings were resumed in this case at this place in 1901?

A. Immediately after that trial I returned to my home in New York and took no active and continuous part in the matter from that time on until the later part of 1901.

Q. Have you been chiefly or largely engaged in looking after the matter of witnesses on behalf of the defendant King in this case during and sometime prior to the taking of depositions before the present commissioner?

A. Yes sir, that and the business part of the matter has been my chief employment.

Q. There seems to have been some intimation in the line of examination pursued by counsel for the contesting defendants that pecuniary or other valuable considerations beyond the legal witness fees have been given or promised by you or others on behalf of Mr. King to induce or procure some persons to testify as witnesses in this case; I will ask you whether you have given or promised anything whatever to any person to testify in this case as to any particular matter, or to testify at all, or have authorized or known of such a thing being done by any person on behalf of Mr. King?

A. I have not.

Q. When you secured from Daniel Justus a statement and affidavit from him, which affidavit was by request of contesting defendants filed in this case, had you any purpose
page 531.] or expectation of using that affidavit in this or any other case or of calling Justus as a witness in this or any other case for any purpose whatever?

A. I had not.

Q. You may state the causes and circumstances that led and induced you to secure from Justus the affidavit referred to and the information therein contained.

A. I believed when I got that affidavit from Daniel Justus and expressed that belief to my associates—Judge Stiles and Mr. Dixon, that that would be an end to the whole matter of any at-

tempt to establish a corner on the waters of Knox Creek, of this survey, for the whole thing bore such plain evidences of fraud that it was inconceivable to me that lawyers of any sense would pursue the matter further, and I never for a moment contemplated the necessity of calling either Dan Justus or any other person to the witness stand on this particular matter. Some time in the winter of 1901 and 1902 I began to hear reports about a corner of the survey that had been foud on Knox Creek west of the four white oaks as a south-west corner, several parties came to me and told me that Mr. Campbell, of Campbell & Holt was talking a great deal about a corner that he had found there that would finally and conclusively end the King case. I listened to these reports for some time before heeding them very much--there had been so many cock and bull stories about the case, but upon consulting with Judge Stiles and Mr. Dixon who seemed to be more worried about it than I was, we made up our minds that it would be best to look into the matter pretty close; so Mr. Dixon and I went up to Long Branch in the state of Virginia. I think previous to this some reports had come from that section to me about this corner. At Long Branch I got into communication with a man who was friendly to us by the name of J. N. W. Blankenship, he told me that a man by the name of Reece Davis had told him that Campbell, Sheppard and Gaujot were engaged in putting
page 532.] up a bogus corner on the Race Fork of Knox Creek.

About that time I was at Panther Creek in West Virginia and there I met several people from the head of Knox Creek who came out to see me on an appointment, among them was John McCoy, who has been a witness for the contesting defendants in this case, and who had been in the habit in years past of informing us as to certain happenings on Knox Creek, and in a conversation with him at that time, I asked him what there was about this reported corner on Race Fork and he smiled and said "O it was nothing but a fraud" and that he could tell me the whole story about it. I told him I would like to have him and he began to talk about certain things he wanted to settle with me first, concerning some

lands we were disputing over with him. I made him no answer and talked no further with him.

When Blankenship informed me about Reece Davis I told him to go over and see him and ask him if he would come to Huntington or Charleston and meet me—that I would pay his expenses there and whatever the going wages were for his time. The result was some days after I received notice that Reece Davis and Mr. Blankenship would be at Huntington on a certain day. I forget whether he came to *Hunting* or whether I met him at Kenova but it resulted in our going to Ironton Ohio. Mr. Dixon, Judge Stiles, Blankenship, Davis and myself, and we went there for the purpose of going to the theater that night as there was no entertainment at Huntington. Mr. Davis after a thorough consultation with him, reduced the information he had concerning this supposed corner to writing in the form of an affidavit. I had never met Mr. Davis before to my knowledge, at all events I *dident* know him, and I wanted this statement in exact form for I was still laboring under the idea that all these reports about a corner were *exagerations* for I *dident* believe lawyers would be engaged in any such thing, but Davis seemed to be so clear about it and his whole story so reasonable that I made up my mind that I would go to

page 533.] the bottom of the affair. When Mr. Davis got ready to go home we settled up with him and paid him for the time he was there and his expenses. I do not mean to say that Mr. Davis wrote out the statement, himself, Judge Stiles, I think prepared the paper, the affidavit, at the dictation of Mr. Davis. I dont remember just exactly what I paid Davis per day but I think it was $1.50, he testified as to the amount I paid him, I think, and his testimony is true. The rate to be paid him was left to Mr. Blankenship, as he knew about those matters and it was the going wages paid men for days labor in that country.

Soon after this, based upon the information I had received from Mr. Davis and Mr. Blankenship, particularly as to the parties whom Messrs. Campbell, Sheppard and Gaujot were going to use, to testify as to this corner, I got Blankenship and Reece Davis to go to Dan Justus and to say to him that I would like to meet him some

where and that I would prefer to meet him at Charleston or Huntington. Reece Davis had informed me that Dan Justice was the person that had been employed to collect evidence to establish this corner and that he could reveal everything there was in it, more than Reece Davis knew. Mr. Blankenship said he believed he could get him to come out and see me. Some days after I received notice that Daniel Justus and Blankenship would be at Charleston to meet me. I think I was there at that time I am not quite sure, at all events, Justus, Blankenship and Dixon came there and I met them at the hotel and afterwards at Judge Stiles office. That evening in the presence of Mr. Dixon and Mr. Blankenship I had a conference with Dan Justus and he there told me substantially what he has said in his affidavit and I agreed with him to pay him certain money as stated in the agreement put in the case.

Q. Who reduced his statement to writing in the form of the affidavit on file?

A. I did.

page 534.] Q. Did you embody in that affidavit the substance of his statement to you as you understood them at the time?

A. I endeavored to do so accurately.

Q. Was the money that you agreed to pay him and the other things you agreed to do promised for the purpose of securing any particular statement or simply in general a full disclosure of just what he knew about the matter whatever those facts might be?

A. I told Justus that it would be useless for him to state anything to me that was not absolutely a fact, that I was in such a position in the country that it would be impossible for me to use anything that was not strictly so; that the parties that were fighting King had an advantage and might make a lie work fairly well but I *couldent*, and if there was a corner there I wanted to know it; if there were marked trees there, I wanted to know it, if there were no marked trees there I wanted to know it, it *dident* matter what the facts were I wanted to know the facts, I *dident* care what the facts were, I had sense enough left to know that I had got to meet facts and Dan Justus and Blankenship were thourough-

ly impressed with the idea at all that I was after was the facts and if I could get the facts I would take care of the lawyers afterwards—or take care of the case. I took his statements as they were given me and they were substantially as he testified on the stand. I never knew Dan Justus, never heard of him until Reece Davis told me about him and I never saw him until that evening at Charleston.

Q. Some reference was made by Mr. Campbell, I think, to an agreement with Elizabeth Justus to releast some land of hers which agreement was said to be in your hand writing, you may state what there is about that?

A. Several years ago Mr. Dixon had spoken to me about a widow woman living on Knox Creek who owned a piece of land in there. I dont know but what he wrote me about it page 535.] before I came down here in 1901. Here name was Elizabeth Justus. That she had been very kind to him in some matter and it would be a charity if her land was released so that she could do something with it; that he believed she had possessed the greater part of it against us any way and he wanted to know if I *wouldent* consent to that land being released. Of course the matter was referred to Judge Stiles as I remember and he thought it was a case in which the land should be released. I did and Dixon did and I either wrote or saw Judge Stiles and told him to have it released and I may have *writted* a letter to her at the time also, telling her that the land would be released. The land was then and there released and *dident* require any further action necessarily, at least I believed it myself to be fully released and I intended it to be released then and I havent regretted doing it yet and I dont think there is anything criminal in it. For some reason no regular release was executed to her and the first that I heard of that being a fact was when Dan Justus and his people came out to Williamson to testify in this case. I rather upbraided Judge Stiles for neglecting to do this and said it was a bad time to do it now. Mrs. Justus had seen the Judge I think but I determined to do it right there and then, I was pretty sure the

lawyers on the other side would know all about it but I took the consequences of that and that is all there is to the story.

Q. What was the area of that tract?

A. I dont remember but something like one hundred acres.

Q. Do you remember whether the reason that I had not had a formal release executed long before was that the land had not been properly surveyed so that it could be definitely described and insisted that that be done before any deed was made?

A Yes sir that was the reason you gave me for the delay. And I considered it a very proper one.

page 536.] Q. At the time it was agreed that the little tract of land claimed and occupied by Elizabeth Justus should be released, did you or any of us know that she was in any way related to Dan Justus or know anything about Dan Justus at all or had any such thing as a Race Fork corner or marked trees on Race Fork ever been heard of or thought of?

A. I *dident* know she was any relation to Dan Justus, I *dident* know who she was only that she was a widow woman; I never had heard of Dan Justus, never had heard of a corner on Race Fork of Knox Creek or any fork of Knox Creek other than the four white oaks. In a word so far as I am concerned the transaction with Mrs. Elizabeth Justus was as remote from anything that has occurred in this case as is possible to conceive. What Judge Stiles or Mr. Dixon knew in the secrecy of their own bosoms I dont know. They *dident* intimate the least word about any such thing to me and I have heard them say they *dident* know who she was at the time or her relations with Dan Justus.

Q. Some reference was also made by counsel to a transaction with Simeon or Morgan Justus relative to some lands claimed by *simeon* up near the four white oaks, you may state when that agreement was made and the general nature of it?

A. That agreement was made some considerable time after taking of depositions at Williamson in which Dan Justus and others testified. It was for a piece of land, I forget the acres, lying on *th* main waters of Knox Creek near the eastern boundary of the

Morris survey. I had investigated the status of this land with respect to the time in which it had been in possession of Simeon Justus and his grantor and I was satisfied that he had held adverse *possession* sufficiently long to have obtained title against us. I agreed to release King's claim over the land reserving to King the coal and mineral rights and rights of way and a certain portion of the timber. My object in making this deal was to stop Mr. Ritter from building a tram road over that land. I was led to believe that the uniting the two titles we could make considerable of a fight against Ritter. The condition of that release was that this fight should be made, otherwise the release was null and void. That is my recollection of the paper. Whether it was so specified in the paper I am not quite certain but that was the spirit of it.

page 537.]

Q. Was the Ritter Lumber Co. setting up a third claim of title to the same land under another and junior patent?

A. Yes sir and Ritter was fighting King in combination with the contesting defendants at every point.

Q. Had the agreement above referred to any reference whatever to this case or to the fact that Morgan Justus who was some relative of Simeon, had previously testified in this case in behalf of Mr. King?

A. It had no connection with this case whatsoever and no connection with what Morgan Justus had or had not testified to. The fact is this piece of land had been talked about and the situation discussed with other parties long before I ever heard of Morgan Justus.

Q. Is it not a fact that negotiations *towrds* and efforts towards compromises had been made from time to time for a number of years with a good many of the people of Knox Creek with more who testified in behalf of the contesting defendants, than of those who testified in behalf of King all of which have no reference to anything, except an adjustment of conflicting claims of title?

A. I recall very few who testified in behalf of King who ever approached me or any of us with any kinds of propositions for

settlement. I do *recal* quite a number who testified for the contesting defendants who bothered me a great deal with *proposotions* for settlement of lands. They have proposed all sorts of things to me and continually.

page 538.]

Q. Were you in the room at Welch where the deposition of Wayne Justus was taken the last time?

A. Yes sir.

Q. If you observed any *unesual* occurrence in connection with that you may state it?

A. Wayne Justus was on the stand or about to go on, he was in the room when General Rucker appeared in the room, and in a tone of voice that was audible to me and with a bustling and aggressive *appearence* that was plain to everybody, he either spoke to Commissioner Graham, or to some body in the room, so that Wayne Justus heard and understood what it meant, and asked which one was that Wayne Justus, or which is the man and Wayne Justus was pointed out to him, and I had seen General Rucker just prior to that conferring with some of the attorneys for the contesting defendants and they seemed quite busy about some matter and his *appearence* explained it to me. Soon after, and I think while Wayne Justus was testifying, a man appeared in the room suddenly and interrupted the proceedings in a way that all would naturally take notice of and as I now understood, asked him which was Wayne Justus, and some one, either the commissioner or some body else, poiated him out and this man spoke up and said "Mr. Justus I want to see you when you get through here down stairs". The testimony of Justus was then continued with until he got through and we went down stairs into the street and Wayne said to me "They are going to arrest me". I told him to stay with me—to stay along side of me and we got out into the street and this gentleman, who I was afterwards informed was a deputy sheriff of some kind, took Wayne Justus to one side. Judge Stiles came down stairs and I told him to go and stand by Justus and see what was being said. I think *befor* the talk was over I stepped

up and told Justus to come along with me. I asked him if any papers had been served on him, he said no. We went
page 539.] down to the hotel I paid him off—paid his fees, and told him so far as I was concerned he might go, do what he pleased. He said this Deputy Sheriff had asked him to remain in town, that he had no paper to serve on him but wanted him to remain there. I told him he could do as he pleased about that, it *dident* concern me, but that I wished him God Speed, and I told him I *dident* think he was under *arest* or anything else and if he was arrested or molested in any way I would stand by him as long as I had a dollar. I saw the Sheriff after that—went and saw him on purpose. I asked him what he was up in the room for in that Justus matter, he said Rucker got him to do it. I told him I thought it was a damn pretty business for him to be in or Rucker either. He said he *wasent* at fault about it and that he had told Rucker at first that he *wouldent* do it but finally consented. This was several hours after the episode. I asked him if he wanted Wayne Justus He said "No not much".

Q. Where did you next see Wayne Justus after that day?

A. I saw Wayne Justus the next day as I went down on the train to Williamson at Alnwick in West Virginia. He got on the train there and went to Devon and got off there.

Q. Had you offered any inducement of any kind whatever or any persuasion or had it been done on behalf of Mr. King to lead Wayne Justus to make a correction in his testimony for which he was reexamined at Welch?

A. No sir. I never saw Wayne Justus until he came there to retract, except when he was on the stand at Williamson. It was entirely voluntary on his part. The word was sent me as soon as he returned *hom* from his first examination that he had testified falsely and wished an opportunity to retract, and I sent back word that I would give him the first opportunity that occurred. Soon after I was informed that he started out to go to some hearing given by the commissioner in order to retract his *reprious* testimony.

He had cut his foot with an ax and got part way out when he was overcome by pain and had to stop. And the next
page 540.] opportunity was at Welch.

CROSS EXAMINATION

By Mr. Campbell.

Q. Who was and is associated with Henry C. King in the purchase and ownership of this claim of the Morris Graat?

Objected to by the defendant King

A. T. S. Bullock, Mr. Freshman, Mr. Skinner, myself and there may be some parties that I dont know but if there are they are minor parties.

Q. Had the railroad bonds which you say were used in paying in part for the land been *resistered* on the New York, or any other Stock Exchange, or listed in any exchange?

A. No sir they had not.

Q. Have they since been listed to your knowledge or information?

A. No sir. They have not been listed in the form that they were *is* but they may have been listed on the London, Berlin or Paris stock Exchange in another form.

Q. Please explain in what other form they have been listed?

A. I could not, the road has gone through a reorganization and I had no interest in it and had no reason to follow its history and it is now owned by the Mexican Central.

Q. After the building of the road over which these bonds were a lien was not the railroad *parallelled* by another railroad, before the sale or transfer of the bonds to the persons from whom you and *and* your associates purchased the claim to the Morris Grant?

A. No sir the road never was *parallelled*. It is not *parelleled* to day and it is the only road draining one of the most important sections of Mexico.

Q. At the time of this purchase was not these railroad bonds without any marked value?

A. No sir they had a market value—quite ex-

page 541.] tended. In 1893 there was a general crash throughout the country and no railroad bonds were finding a very ready market. It was a period of almost complete stagnation.

Q. Had these bonds not depreciated in value until you could not realize beyond ten cents on the dollar in the open market?

A. While I was connected with the road no such condition approximating that statement existed.

Q. At the time of the purchase of the claim to the Morris Grant was not the railroad bankrupt and had not these bonds depreciated until they were not worth more than ten cents on the dollar?

A. The road was not bankrupt and just about that time, in spite of the bad market, sales had been effected at sixty cents on the dollar.

Q. Were those sales for cash if so how long before or after the purchase of the Morris Claim?

A. They were for cash of course and it was on or about that time I *couldent* say the date.

Q. Can you give us the name and residence of the purchasers of bonds at sixty cents cash?

Objected to by defendant King.

A. I dont know as I can recall now the names of the parties for I was not then so actively engaged in the matter. I am trying to recall the name of a bank in London that bought some about that time at about sixty or seventy cents on the dollar but I cant recall the name of the *bank*. At that time the main portion of the bonds had ben taken up and were not on the market. I think J. & W. Soligman & Co. bought some of the bonds about that time. I think the Holland Trust Co. bought some about that time. I think the Chatham National Bank about that time bought some at sixty or seventy cents on the dollar.

page 542.] It would be difficult to give an intelligent idea of the cash value of those bonds at that time. To illustrate Kountze Brothers had a mortgage on this land for $16,000.00 which was due on the very day that we made our payment. They gave us to suppose that a certified check would be the

proper mode of paying off same, usually that would be an acceptible payment. At the very last moment before 3 o'clock, King was notified that he would have to pay cash and that they *wouldent* take a certified check. The money had been deposited in King's bank to make the payment and in order to comply with the demaand, which was perfectly legal, current funds would have to be provided. The bank on which Mr. King's certified check was drawn, refused to cash it owing to the money panic. The banks were generally refusing to pay out cash even on cash deposits. Kountze Brothers stated that if we *dident* furnish the cash the mortgage would be foreclosed, or lien or whatever it was and the trade would consequently fall through. Mr. King went to his bank with a lawyer and threatened if the cash *wasent* payed over instantly on that check he would put the bank in the hands of a receiver, This would indicate more clearly than aay quotations I could place on the bonds the difficulty of naming any cash value on them at that time.

Q. Did Mr. King and his associates close the purchase to the Morris Claim without first having the title to the property abstracted?

A. No sir I think it was abstracted and a thorough search made as to the title by competent lawyers. Lawyers were even sent here and to Richmond and other places to investigate the title —by here I mean the State of West Virginia.

Q. Did you make any enquiry or examination into the question of the payment of taxes on the property?

A. Personally I made none before the purchase.

Q. Did Mr. King or any one for him make such investigation or enquiry?

A. Yes I understood he did because they named the amount to me as three or four thousand dollars that was the

page 543.] amount of taxes due.

Q. Did the lawyers who abstracted the title submit their report before the purchase was made and therein show that the portion of the survey in West Virginia had not been entered on the books

of any county or counties of the State for the purpose of taxes since 1883 and that no taxes had been paid thereon since that date

A. Yes sir a written report was made by the attorneys giving the result of their investigation of the title, but as to just what is said in reference to the taxes or the land not being on the land books I do not recall, only in a general way I became possessed of the idea that the payment of the taxes was a mere clerical matter as it would be in the country where I lived.

Q. Who made and submitted the abstract of title?

A. Well I think there were two or three lawyers employed in searching up the title but the chief examination was made by Blair & Rudd of New York and the report was made by them.

Q. Did not you and Mr. King understand that there were back taxes due on the property at the time of your purchase and that the property was then and had been for a number of years off the books?

A. Both M. King and I understood there were back taxes due but neither of us understood anything about the land being off the land books.

Q. Did not the abstractors call attention to that fact of the land being off the books in their report on the title?

A. I dont think so.

Q. What time in 1893 did Mr. King make his purchase?

A. It seems to me it was in the spring of the year. I cant fix the date, I could fix it by *referrin* to some papers. It was at the time that the panic in New York became so acute that the banks in New York even refused to allow men to draw money sufficient for their personal expenses almost.

page 544.]

Q. Was the suit of the State against LeMoyne and others seeking the sale of the Morris Grant for taxes, then pending in the Circuit Court of Logan County?

A. My impression is that it was.

Q. Did the abstractors report call attention to this action?

A. I do not recall that fact.

Q. How soon after this purchase did you come to West Virginia to look after this claim?

A. Very soon—a matter of two or three weeks, or perhaps shorter than that.

Q. Do you recollect when Mr. King appeared by Mr. Shumate in the case of the State vs. LeMoyne and others?

A. No sir I dont.

Q. When did Mr. King bring his first action of ejectment in West Virginia?

A. I think in 1894 or 1895, the record of them will tell.

Q. The principal part of the spring, summer and fall of 1895 was consumed in making the survey was it not and map?

A. I dont know just what particular time was consumed in making the survey, in what month or year, but a very considerable time was consumed in making the survey.

Q. The first trial in West Virginia of any of these actions of ejectment took place did it not in October or November 1895, resulting in a hung jury?

A. I think so?

Q. The second trial of the same case took place in January 1896 resulting in a verdict under the instructions from the court, for the defendant, did it not?

A. Whether the verdict was strictly for the defendants or not I dont know. Judge Goff decided that we had no standing in court on account of the forfeiture.

Q. Judgment was rendered on this verdict was it not about the 24th. of February 1896?

page 345.] A. I think so.

Q. Did not Mr. King prosecute a writ of error from this judgment to the Supreme Court of the United States?

A. Yes sir.

Q. This writ of error was not disposed of by the Supreme Court until some time in 1898, when the judgment of the lower court was affirmed?

A. Yes sir.

Q. Meanwhile was there any effort on the part of Mr. King or

of those representing him to bring to trial any other of his actions of ejectment in West Virginia?

A. I dont know that there was.

Q. And there has been no effort from that day to this to bring those case to trial?

A. I dont think anything was done in any of the ejectment suits. We had been notified that some of them would be brought on and we were ready to try them.

Q. The question of the true location of the Morris survey has been present and a contested matter and a matter much talked about from the very time you first appeared in the country after the King purchase, down to the present time has it not?

A. Yes sir.

Q. On a determination of that question depends in great part as to what lands, if any, Mr. King is entitled to redeem from forfeiture.

Objected to by the defendant King. The extent of King's right to redeem is stated in the opinion of the Supreme Court of this State.

A. I couldent answer that question, I dont know—it is a legal question.

Q. If the Turkey, Gilbert Creek line so called be fixed and determined upon as the western boundary of the Morris grant would not that fact preclude any claim of title or right of redemption by Mr. King of any land west of that line?

page 546.]

A. I think for the same reason I *couldent* answer that, I would willingly answer it but it is a legal question. If it were finally determined that the Turkey Gilbert line is the western line of the Morris grant it would cut King out of pretty much all the land he claims.

Q. Were you informed about the time of its execution of the fact of the written stipulation made between Judge Stiles acting for Mr. King and Mr. Sheppard acting for Mr. McClintonk, to suspending proceedings in this case then pending in Wyoming

County, until the Supreme Court of the U. S. should act upon the writ of error before mentioned subject to certain contingencies?

A. I think I knew nothing about that stipulation at the time and what I know about it has been derived from what I have heard in the prosecution of the cases.

Q. Were you informed of the fact that Judge Stiles on behalf of Mr. King sought an agreement with Mr. Sheppard, as attorney for the state to suspend in like manner and for like time further proceeding in what was known as the Logan cases—State against LeMoyne and the other suits pending against the other large surveys?

A. I dont think I had any knowledge of its particulars *it* I had any general knowledge of it.

Q. You understood did you not that it was the desire of Mr. King or his attorney that all proceedings in all other cases effecting the Morris grant whether such suits were prosecuted by King or by the state should be suspended until there should be an authoritative announcement by the Supreme Court of the U. S. on the law of the forfeiture involved, which like the question of location was a burning and vital question in these various litigations?

page 547.] A. No sir I never knew that it was the desire of King to hold anything. King's desire was my desire generally speaking and my desire was always modified by the advice and actions of Judge Stiles. I was for fighting right straight along, waiting for nothing, but I understood that it was a general cessation of hostilities more on the part of the contesting defendants even than on our side, in order to await the final judgment of the Supreme Court on that question.

Q. Would you have been desirous and willing to have brought all of your other West Virginia actions of ejectment to trial after Judge Goffs decision that Kings title was forfeited and outstanding in the State and before the Supreme Court could act upon the writ of error aforesaid?

Objected to by the defendant King.

A. I would have if Judge Stiles had advised it and would not

have if he had not have advised it. In those matters his opinion would have been supreme—always has been.

Q. Why did you then quit West Virginia for a time and not stay here and insist upon an immediate trial of all the other actions of ejectment?

A. Well I have got one of the *pleasentest* homes a man ever had and I know I have one of the best wives and the best boy and I was home sick away down in my boots and I went home and I *wouldent* have come back for the whole state of West Virginia at that time.

Q. Did you seek and obtain Judge Stiles advice on the propriety of rushing the other actions to trial in view of Judge Goff's decision?

Objected to by the defendant King.

A. I dont think we ever did. The matter seemed to rest there and it is the one surprise to me that the other side *havent* forced a trial of them, we have talked about that often since. I was glad as I wanted to stay at home. It has been a mystery that they have been allowed to stand there by the other side.

page 548.] There was no plan on our part to keep off the trial of these cases.

Q. After the Supreme Court of the United States did act on that writ of error by affirming the judgment below, holding that King's claim was outstanding in the state by reason of forfeiture and until this cause was remanded to the Circuit Court of Wyoming County and thence transferred to Logan and thence transferred to Cabell all of which transfers were result of motions by King to change the venue of the cause, and until after the determination by the Supreme Court of West Virginia of two separate and distinct prohibition cases brought by Mr. King, to prevent the lower court from entertaining jurisdiction of certain questions in this case, and until after Mr. King's effort to remove this cause into the United States Circuit Court had failed, has not all actions in all other cases, I mean the actions of ejectment in the Federal Court in what are known as the Logan cases have

been suspended by mutual acquiescence on the part of Mr. King and others?

A. Objected to by defendant King.

A. I dont think there has been any mutual acquiesence on the part of King. The fact is the other actions have been suspended but that suspension has been the result of your—the contesting defendants activities in other ways which have not only kept *our* hands tied but has resulted in keeping them pretty busy. If it is sought to show that King is in any way responsible for any delays in the trial of any action I only state that he has not been responsible nor has his counsel nor have I his agent.

Q. Then why has not Mr. King, his counsel, or his *agen* brought on for trial the several actions of ejectment?

A. We have been so busy that we *couldent* do it. I understand Judge Stiles was at one time notified that same of the actions would be tried in the United States Court, he interposed no objections nor delays.

page 549.] Q. You refer do you not in your last answer to a notice given to Judge Stiles as counsel for Mr. King by certain defendants in the several actions of ejectment that such defendants would at a particular term of the United States Circuit Court, for the Southern District of West Virginia, sitting at Huntington, would insist upon a trial of those actions of ejectment, at the September Term 1902?

A. Yes sir I think it was about that time. That is what I refer to.

Q. Did you understand that Judge Keller of that court deemed himself disqualified to preside at that trial and that there was no other Federal Judge present to preside?

A. Yes sir and I have always understood that the contesting defendants would not try any case in the United States Court unless they could get Judge Goff to come here and sit, it *dident* matter who the other Judge was.

Q. From whom did you get such an understanding?

A. It was the result of my observation of the course of counsel—

the uniform course of counsel on the other side, and a general talk.

Q. Did not the so called contesting defendants move before Judge Keller to remand this cause to the State Court because it had been improperly removed on Mr. King's petition in the Federal Court, and Judge Keller declined to hear the motion, on the ground that before his appointment to the Federal Bench he had at the instance of some client given an opinion on the King title?

A. I cant answer that question I dont know why Judge Keller refused to hear the motion. I only know Judge Goff came here and did hear the motion.

Q. Do you know of any effort on the part of Mr. King on the 21st day of April last immediately *preceeding* the

page 550.] day when the *commisson* had given notice to proceed in this case to again remove this case into the Federal Court?

A. It seems to me there was some effort on the part of Judge Stiles to remove the case into the Federal Court along about that time. What it was I am not altogether advised. I know that we have made every effort possible to get into the Federal Court with this case.

Q. You referred in your evidence in chief to Mr. U. B. Buskirk as Commissioner of School Lands of Logan County, and at the same time to the fact of his engaging in removing timber to the lands on Rum Creek claimed by Mr. King, had not a portion of that land from which he was removing timber been granted by the Commonwealth of Virginia to sundry persons and had not all other portions thereof been previously granted by the State of West Virginia by deeds from the Commissioner of School Lands of Logan County to sundry person and did not Mr. Buskirk buy that timber from M. B. Mullins who had purchased this boundary from the several owners by deed or deeds of record in that county? And did he not defeat Mr. King in the Federal Court in his ejectment suit and was not the action of the lower court affirmed by the Circuit Court of Appeals at Richmond.

A. I understood that certain small portions of this land had

been deeded by the Commonwealth of Virginia before the separation of the two states; that there was little or no timber left on this part of the land, that a large part of the land had passed to Chambers by a title derived from the Commissioner of School Lands in West Virginia and under sales that were so *grossely* fraudulent in their character that even Mr. Buskirk blushed to assert them. I understand that the lands were bid off by Chambers wife and his relatives and in all sorts of irregular ways so that the common report about them was that it was just a plain ordinary steal. The case was decided against King and that

page 551.] decision was affirmed by the Circuit Court of Appeals.

Q. The bill in chancery against U. B. Buskirk was dismissed with costs against Mr. King and the injunction thereon previously granted, dissolved, was it not?

A. Yes sir as I understand Judge Goff *disolved* the injunction with costs, And dismissed the bill.

Q. Were you present when any of *thse* lands were sold by the Commissioner of School *Lnads* of Logan and bid off by Mr. Chambers wife or relatives?

A. No sir.

Q. When you express the opinion that they were *grossely* fraudulent you are simply giving your opinion on what you have been informed about such sales are you not?

A. Yes sir.

Q. If there were any fraud in the sales was that fraud against the state or against Mr. King?

A. I suppose legally it was against the State, practically King got defrauded.

Q. You also referred to Mr. Sheppard in connection with certain timber on Buffalo Creek to what timber do you refer and how was Mr. Sheppard connected with it?

A. I understood that this was the McClintock timber of course I dont know just how Mr. Sheppard had an interest in it. The information that I received was that he had what is termed a "divy" in the timber in some way. This timber was largely off of vacant land or land that had not been sold by school sales, and

still belonged to the State or to King. Mr. McClintock was allowed to take the timber off in spite of ever effort on the part of King to stop him.

page 552.] Q. From whom did you get the information that Mr. Sheppard had such interest in the timber or was to derive any money from it?

A. I dont know that I can recall the name of any parties and I doubt if I would be willing to tell if I could.

Q. Was Mrs. Elizabeth Justus at Williamson on the occasion when you gave a contract to her agreeing to deed to her certain lands on Laurel Branch of Knox Creek?

A. As I remember she was not.

Q. Who renewed the question with you on that occasion?

A. I think Judge Stiles first said he had met her a few days before some where and she had importuned him about it, and Squire Stacy asked me about it, and had asked once or twice before, either through Dixon or to me direct.

Q. That paper was executed on the 8th. day of September 1902 was it not and Dan Justus and his children, his wife, son in law and brothers, were put on the stand the next day by Mr. King?

A. I dont remember the exact day of the execution of the paper. The paper was executed at the time we were taking the depositions at Williamson of Dan Justus and I think the paper was delivered over to Squire Stacy. My memory of it is that Dan Justus *dident* know anything about it at that time for if he did he never mentioned it to me.

Q. I hand you a typewritten paper consisting of two sheets purporting to have been made on the 8th. day of September 1902 at the heading and on the 9th. day at the concluding part and purporting to have been acknowledged by you as attorney for H. C. King before H. K. Shumate on the 9th. day of September, I mark the paper "Exhibit Elizabeth Justus" and make it as a part of this question and file it with the commissioner and will ask you to say whether or not it is a copy of the paper you executed to her?

Defendant King objects to the question.

A. I have read the paper submitted to me, whether it is a cor-

rect copy or not it would be impossible for me to say, the conditions of the agreement as stated in this paper *ap-*
page 553.] *paer* to me to correspond with the conditions of the agreement I made with Mrs. Justus; as to the dates that appear on this copy I am unable to testify because I do not remember the dates of the original agreement.

Q. Did you show that paper to your counsel before you delivered it?

A. Yes sir.

Q. Had he previusly requested you to execute such a paper?

A. No sir it was I who initiated the whole matter, he *dident* request me, I wanted to do it myself; if anything he was opposed to my doing it but I *wouldent* swear that I showed it to him but think I did but dont remember positively, it was a thing of my own doing.

Q. Did not Judge Stiles on that occasion refer to the fact that you should execute a release or contract of some sort to Mrs. Elizabeth Justus?

A. Not that I recall.

Q. On page 31 you were asked who renewed the question with you on that occasion and you answered I think Judge Stiles first said he had met her a *fews* days before some where and she had importuned him about it, is that not the fact?

A. That is the impression on my mind.

Q. Has the deed therein promised been executed and delivered and delivered to her?

A. I do not know about that.

Q. Where were you when Dan Justus gave you the affidavit that has heretofore been filed and when you executed and delivered to him the contract a copy of which has also been filed and when you paid him the $100.00 therein recited?

A. I was in the office of Judge Stiles at Charles-
page 554.] ton, West Virginia.

Q. Since that time have you paid to Dan Justus the remaining $400.00 or any part thereof?

A. Yes part of it has been paid. Just how much I *couldent* say.

Q. Give us your best impression as to the amount paid?

A. Perhaps $150. or $200.00.

Q. When was that payment made?

A. At various times I *couldent* recall the dates of it.

Q. When was the last payment made?

A. I think some few days ago some of us sent him some money. Some $15.00 or $25.00 he wanted some to pay a doctor bill so some one said?

Q. By whom was the money sent to him?

A. I think Mr. Dixon got it to him some way.

Q. When had the payment been made which *preceeded* this last payment?

A. I *couldent* tell you that. I *havent* kept any particular account of it. Sometimes Judge would send him money and some times Dixon and sometimes I would, he always got it when he asked for it.

Q. By Judge to whom do you refer?

A. To Judge Stiles.

Q. Was the money sent by check or in currency and was any receipt taken for any of the payments?

A. I dont know what the Judge or Mr. Dixon did about taking receipts, I never took any. I remember one time myself of paying $50.00 in money but I *dident* take any receipt for it, I just took his word for it?

Q. Can you state when that was?

A. No I *couldent*.

Q. How long after the taking of the depositions of Dan Justus and others by you was it that you sent to Simeon Justus a written agreement of some sort releasing to him certain claims.

A. Why I think it was a matter of a couple of months, perhaps longer.

page 555.] Q. How much of the land mentioned in that paper was claimed by Morgan Justus?

A. I dont know, my impression is that he had an undivided interest in it some way either in the land or timber.

Q. Did not some one representing Mr. King promise to release to Sennett Justus some land he claimed when he should have it partitioned and set apart from some cotenant of his

A. No body that I know of. Certainly Mr. Dixon or Judge Stiles would not make such a promise without consulting me. They never had done such a thing and I never made such a promise.

Q. Have you or any other representative of Mr. King as yet selected or conveyed to Daniel Justus the 100 or 150 acres of land promised him as a home in the agreement of April 21st. 1902

A. No sir.

Q. Has King's title to the lands on Knox Creek been finally settled by adjudication in the courts of that Commonwealth, State or Federal?

A. No sir.

Q. Do you remember that in the early part of 1894 Mr. H. K. Shumate *qs* attorney for Henry C. King appeared on behalf of Mr. King in Logan Circuit Court in the case of the State vs. LeMoyne and others and moved to quash the order of publication therein and that thereupon Mr. Sheppard had an order entered dismissing the suit and in June 1894 having the cause reinstated on the docket with that order of dismission set aside, after notice for that purpose to Mr. King's counsel?

Objected to by the defendant King.

A. I dont know just what Mr. Shumate did. I know Mr. Sheppard had that suit dismissed and it was afterwards reinstated.

Q. In one of your answers on page 17 you say that when Wayne Justus was on the stand or about to go on General Rucker appeared and asked which was Wayne Justus, is it not a fact when you come to think of it that Judge Stiles acting for Mr.

page 556.] King placed Wayne Justus on the witness stand one afternoon and examined him in chief and that his cross examination was then proceeded with that evening and night to almost completion and that he was adjourned over until an early

hour the next morning to complete his cross examination, and that it was not until within ten or fifteen minutes of the completion of his cross examination that general Rucker appeared in the room and then only to call counsel for contesting defendants out into the adjoining room and that just about the time when the last question was being asked on cross examination that the Sheriff appeared and enquired for Wayne Justus and requested him or announced that he wanted to see him when through there?

A. My memory as to the extent of the examination of Wayne Justus the night before the appearance of General Rucker is not very definite and had you not called my attention to it I should say that the examination *hadent* gone far if at all, but this I am sure, from the time that General Rucker appeared there in the morning to the time that Justus went off the stand was a very considerable time and embraced the principal part of his examination. The Sheriff appeared there at the latter part of his examination but as far as my memory serves me not as near the end of it as you state, some time elapsed after the sheriff appeared there until Justus was through. General Rucker asked about Wayne Justus and for that reason I connected this man that appeared, with General Rucker. I *dident* know that he was interested in the case at all until this incident occurred and *shouldent* of thought of his being interested in the case then only he was looking at this man —talking about this man.

Q. Did not the Sheriff of that county tell you that the Judge of the Criminal Court of that County had directed him to detain Wayne Justus until he, the Judge, could return on the next train, when a warrant would be issued?

page 557.] Objected to by defendant King.

A. No sir. There was some such talk as that before I left Welch afterwards. What the Sheriff told me exactly was this:—he sad that Rucker told him to tell this boy that the Judge wanted him to stay in town, not for any length of time particularly, he put it in the way of saying that the judge wanted him not to go away and he *dident* say that the judge had told him to

have the boy stay, on the contrary he said just the opposite and he said he *wasent* going to get himself into any fuss, and *wasent* going to do any dirty business just for General Rucker. I told him if the court wanted the boy I had no doubt he could be had, though I *dident* know where he was then, as that was late in the afternoon

Q. You spoke in your examination in chief of some report coming to you that Mr. Sheppard attorney for Buskirk Commissioner of School Lands and the Commissioner himself ought to be seen by you and fixed and that thereupon you would have clean sailing, and that you inferred that this meant some corrupt contract you should make with them, who was it that told you of such report? or made any suggestion to you should fix them in any way?

Objected to by the defendant King.

A. The suggestion came to me from several parties, I will be frank and say that I could name one or two of them at least but I think I am bound to refrain from doing so. It might involve them in unpleasant relations.

Q. Do I understand that it was a mere suggestion by one of the parties that in their opinion you ought to do that or could do it

A. Yes sir that is all it was and all I intended to say.

Q. Was your understanding that these parties who made that suggestion were representatives of Mr. Sheppard or Mr. Buskirk and were seeking through these representatives to make any improper arrangement with you?

page 558.] A. No sir I *dident* understand any thing about it. I *dident* consider the matter whether they were representatives or not Some of them were people who seemed to have a good knowledge of affairs in this country.

Q. Then the *mater* was nothing more than the mere expression of an opinion on the part of these parties referred to that the Commissioner of School Land and his attorney could be fixed and King thereby secure free sailing?

A. That I did not know and do not know, what inside information they had is *beyong* my knowledge. So far as I was concerned I passed it by with very little thought. That had never been my way of doing business and I *dident* care to commence that sort of thing at that time.

Q. Mr. Sheppard who has been absent until now, during the taking of these depositions, requests that you give the names of those who gave that suggestion to you and the time and place designated so that a full investigation may be made of these reflections upon himself and Mr. Buskirk?

A. If I could give the names of the parties I should decline to do so.

Q. Did you mean by what you have heretofore said that either Mr. Sheppard or Mr. Buskirk were seeking any arrangement or un*derstand* with Mr. King which might be considered improper in any way about the case?

A. No sir I *dident* understand by what was said to me that Mr. Sheppard or Mr. Buskirk was seeking to make an arrangement with me of any kind, that part of my testimony which seems to say that when I read it over *dident* convey to me the meaning that was in my mind. I have no doubt but that my words were taken down just as they were uttered. I *dident* mean to say however that I thought these parties were *emmissaries* from Mr. Sheppard of Mr. Buskirk for I *dident* have that opinion at the time as far as I recall, but I did mean to say this, that very early in the case I formed a very positive opinion from a variety of circumstances that came under my observation that the po-
[page 559.] sition of Mr. Sheppard and Mr. Buskirk was a very
straange one and there was that in their respective attitudes which I could not acount for by any ordinary processes of reasoning.

Q. You spoke about people committing trespass on land claimed by Mr. King by cutting timber and that these officials took no steps to prevent such trespass. Upon reflection do you not recall that every case instituted by Mr. Sheppard for the sale of these

large surveys numbering in all five and covering a larger portion of the county of Logan and particularly the case of the State against Lemoyne and other involving this same *Moris* tract sought and obtained injunctions against such trespasses and that copies of such injunction orders were served by the Sheriff of Logan County on numerous persons and certain printed copies of such injunction orders were scattered throughout the county?

A. Yes sir and I never heard of any of them being really enforced, and that brings me to state specifically one of the circumstances that came to my knowledge that led me to look upon the position of Mr. Sheppard as at least anomalous. In 1893, I think it was, the records will show, I think Mr. Vinson has sworn in a deposition or on the witness stand to the fact, I am speaking from memory but the papers will show, that Mr. Vinson was appointed receiver of McClintock's affairs and that he then and there appointed Mr. Sheppard to take charge of the portion of Mr. McClintocks affairs that lay in that part of the country and which embraced a large timbering operation on Buffalo Creek in Logan County. I think Mr. Sheppard in some way attempted to enforce this injunction that he or some body had gotten out against Mr. McClintock in that timbering operation. I think that Mr. *McClintone* was allowed by Mr. Sheppard to give a bond or some kind of security and allow him to go on and cut the timber. That security or bond if I remember rightly was based upon

page 569.] some land that either Mr. McClintock *dident* have a particle of title to or *wasent* worth anything if he had it, and that Mr. Sheppard if he knew anything at all knew *wasent* worth a cent and proved so to be, and McClintock got the timber off of land that Mr. Sheppard knew belonged to the State or to King and so far as I know the S[illegible] never got a dollar for it.

Q. To what land do you refer?

A. Land on Buffalo Creek.

Q. Was it land claimed by McClintock by the Dewitt Clinton grant?

A. Yes he may have made claim to it under the Dewit Clinton

grant and Mr. Sheppard knew that never a dollars worth of taxes had been paid on that grant and that it had been forfeited to the state of old Virginia long before any of us were born.

Q. Do you recall the fact that Mr. Sheppard prepared a bill in chancery alleging the forfeiture of the Dewitt Clinton 142000 acre grant and the pendency of the suit of the state to sell the same as forfeited and set out the trespass then being committed by McClintock then removing the timber therefrom and obtained an injunction against such trespass and that McClintock appeared before Judge Harvey in vacation in Cabell Court house and moved to dissolve that injunction and that Mr. Sheppard came here at his own expense from Logan County after having procured a number of affidavits supporting the truth of his allegations and resisted the motions to dissolve? and that afterwards the Judge at Logan dissolved the injunction and authorized McClintock to proceed to remove the timber on giving security to account for the value of the timber? and dont you know that Mr. Sheppard in preparing to resist that motion took the county surveyor and left his office and rode over the land on Buffalo Creek and had the surveyor to point out the lines of the patented tracts and those that were sought to be sold as school land in that suit and took

page 561.] and produced the affidavits of the surveyor and others as to the trespass?

A. I have no personal knowledge of these matters. I have not much doubt but Mr. Sheppard religiously went through all these motions. All I know is that neither King nor the State nor any rightful owner of that timber got a dollar out of it and there was thousands of dollars worth of timber cut there and floated out and some body got the money.

Q. What security was given by McClintock that you have referred to?

A. I dont know the security. I was more busy with results and more interested in them than hunting up details that brought no return.

Q. In what case has Mr. Vinson testified that you have under-

taken to quote him as above?

A. I cant just now recall the caption of the case. I think it is a case in the United States Court at Charleston, possibly in the case in which Vinson sought to set aside the Wyoming decree and if I mistake not that deposition in some form or other has been used here. Any way it was to the effect that Mr. Sheppard had charge of those matters there and at the same time as I understand it he was prosecuting *attorney* for the state of West Virginia or in some capacity employed, in the prosecution of the suits against this Morris survey and others.

Q. Was not that same deposition copied and filed in this case as the deposition of Mr. Vinson?

A. I am not quite positive as to that, but I am informed by my counsel that it is.

page 562.] REDIRECT EXAMINATION

Q. Had the value of the Monterey & Mexican Railroad, its earning capacity and the consequent *valut* of the bonds based upon it been affected permanently or to the same extent that the market value of the bonds was effected by the money panic and slump in price of bonds, stock and other securities upon the stock market

A. The value of the railroad properties had not been effected by the money panic or its earning capacity *permanently* injured. The panic merely affected the matter of being able to realize cash to the bonds and of course was temporary in its scope and did effect very seriously the selling price for the bonds if one desired to realize immediately but in trade or otherwise the price of the bonds was hardly affected.

Q. Did you ever hear of Mr. Sheppard taking any appeal from the order of court permitting McClintock to cut and remove the timber on Buffalo Creek or of any patriotic citizen of this or any other state taking such an appeal for him in the name of the state?

A. I never did.

Q. Do you remember whether the blanket injunctions referred

to printed copies of which were said to have been distributed throughout a large part of Logan County were sued out on the motion of Mr. Sheppard or of Mr. Shumate?

A. Yes I always understood that it was at the instance of Mr. Shumate that they were sued out, but as far as my observation went they were entirely *inopperative* any way.

Q. Did you know of any *atempt* on the part of counsel for the State to enforce them or punish violations of them?

A. Never unless it was to enforce them against King or some party claiming under them. They were a cold blooded farce from beginning to end.

Q. Was the land on which Buskirk Commissioner of School Lands was timbering on on Rum Creek and upon which McClintock was timbering on on Buffalo Creek part of the land that King claimed at the time and to which he wished to assert,

page 563.] litigate and establish his title in the suits brought by Mr. Sheppard against these several tracts of land and into which he refused to bring the adverse claimants by process issued in those suits?

Objected to by the contesting defendants.

A. The Mullins land was the same land, the McClintock land was already in the suit.

Q. Were the suits in the United States Court that Mr. Campbell referred to on cross examination decided upon the ground that Mullins, or Buskirk or McClintock had any valid title or upon the ground that Kings own title was outstanding in the State and that he could not maintain an action?

Objected to by the contesting defendants.

A. My understanding of the decisions was that it simply declared King out of court because of the forfeiture of the land and that the title to the land was in the State of West Virginia and did not declare that Mullins or McClintock had any valid title.

Q. You were asked upon cross examination a good many questions about suits and affairs concerning the Morris grant and Kings title during the three or four years of your absence from the State after the trial of the actions of ejectment at Parkers-

burg, what connection did you keep up and what run of affairs did you keep during that time?

A. By correspondence with Judge Stiles I kept generally informed as to the case and to the *maters* connected with the land suits here, but he rarely ever informed me as to the details of the matters. Suits were commenced and a vast deal of detail was done by Judge Stiles during that time of which I had no *knowlede* at all and concerning which I had no desire to learn. None of us ever questioned his judgment of ability in the management of the matters and even when I am here Judge Stiles is in the constant habit of bringing suits and attending to matters in

page 564.] connection with suits without either informing me or consulting me about it .

Q. When you had an interview and arrangement with Dan Justus at my office state whether I was present at the time or was in town at that time or for a day or two before or a day or two after or what, if any, connection I had with that transaction?

A. Judge Stiles was not there at the time. I had not seen him for several days and I did not see him for some time afterwards —at least not until the next day. He knew nothing about the arrangement prior to its being made with Justus and I dont think he knew that I was attempting any such thing as trying to get at Justus. He knew in a general way that I was at work endeavoring to meet whatever might come in the way of establishing a corner on Race Fork by the contesting defendants, but he had nothing whatever to do with my arrangements with Mr. Justus.

Q. Where was I staying—living at the time and where had you been making your headquarters and staying at that time and some months prior thereto?

A. You was at Charleston and I had been at Huntington or on Long Branch in Virginia.

Q. Was there any particular secrecy about the agreement with Elizabeth Justus that has been referred to either at the time it was put in writing or before or afterwards?

A. There was not. I acknowledged the agreement before a notary for the express purpose of having it recorded so that she could

have something more formal than the letters that had been written her, besides by long experience I had learned that no communication in writing to any of the natives in that part of the country ever long escape examination at the hands of some of the counsel of contesting defendants, even my letters became common property and it was the bost of some that I *couldent* write a letter to anybody in that country but what it would speedily find its way to Williamson. Whenever I did settle for any land in that country it was known very quick and many times when I have attempted to make settlements I *wouldent* more than get them into writing before some of the counsel or their agents would get in ahead of me and stop it. And if I ever did get one through it was twisted and distorted into such strange shapes that I about abandoned the practice of trying to settle up with any of them, although I was very desirous to release a lot of the people on Knox Creek who claimed homes there and had probably possessed their lands against us. It only brought worse trouble upon me in the way of accusations from the other side, of attempts to bribe people and I *mde* up my mind that it was better to be considered hard hearted than it was to give them further occasion to keep up a howl.

[page 565.]

Q. Mr. Campbell asked you on cross examination if you had not agreed to release the land claimed by Sennet Justus and you said you had not what did the idea that such an agreement had been made probably grow out of, what did you have to say to Sennet Justus about such a matter?

A. In talking with Judge Stiles after I went off the stand, before supper he reminded me of an incident that occurred with Sennet Justus. It ocurred some time after he had been on the stand and I think that about at the time that witnesses were there in the effort to impeach the witness at Williamson, I think it was the same time the arrangements were made with Simeon and Morgan Justus, as I recall Sennet had an undivided interest in some timber on some land, on Knox Creek, something like 150 acres and he wanted to know if I would make an arrangement with him to release his part of the timber and he give King

one third. He explained the situation of the land, how long he had lived on it and the facts in relation to it, and I told him I *couldent* do anything with him at least until his interest had been partitioned, that if he would do this and have a survey made of the land I would feel very much inclined to make the arrangement if the facts were as he stated. Nothing further has been done in the matter but if the circumstances are as I understand them I shall be very glad to make the arrangements.

page 566.]

Q. If the Elizabeth Justus land has been surveyed with a view to making a deed state if you remember what the surveyor reports it that is what quantity?

A. The survey has been made and the surveyor reports 93 acres in the tract.

Q. Something was said I think by Mr. Campbell in his own testimony about some of the Knox Creek witnesses having threatened to go home unless they could get their lands released you may state what there was to that?

A. Yes some of them did come to me and say that they would not testify unless I released their lands. I listened to them patiently until they had told their story and I told them that if they saw fit to go home without testifying they were at liberty to do so but that I would make no settlements with them and make no promises to them. My memory is that one John Justus and Simeon Justus were the principal men who made those threats, though what others there were who may have felt that way I don't know. Dan Justus made no such threats. Several of them did go home and among them John Justus went and either Simeon went or we *didont* use him. The others went on and testified without any promises from me or anybody representing me and I never been asked to fulfill a single promise of that kind based upon anything that transpired at Williamson during the taking of thoes depositions from any *parte* that testified for King.

Q. Do the agreements filed in evidence with Dan Justus and the one referred to as made with Simeon in which Morgan Justus

had some interest and the one with Elizabeth Justus cover all the transactions and dealings of that character or of any character with the Justuses and their relatives, friends and neighbors or other persons from Virginia or elsewhere who or whose friends, relatives or neighbors have testified in this cause at the instance of Mr. King?

[page 567.]

A. That is a question I cant answer. I dont know who the relatives of these people are. I can say this that the arrangements mentioned are the only arrangements I ever made with any body in Virginia who ever went on the witness stand and testified in behalf of King and I never made any other arrangements with any body by which any of those people who went on the witness stand in behalf of King could profit in the remotest degree.

Here the witness states: That after leaving the witness stand before supper time I consulted with Mr. Dixon and Judge Stiles in reference to my testimony as to who prompted me at Williamson to give the agreement in evidence to Elizabeth Justus. I stated that Judge Stiles did and that he had been approached by Elizabeth Justus to obtain for her some such agreement. He informs me that I am mistaken as to any interview between him and Mrs. Justus prior to that agreement and I am now satisfied that it was Mr. Dixon and Squire Stacy who urged me to make the agreement and at whose solicitation I did so. It was largely a personal matter with Mr. Dixon and he felt that he ought to be protected in his agreement. I wish to say that I have refreshed my memory as to the time when the trade was closed in New York for the land, instead of it being in the spring it was about August that negotiations were completed, I think a deed however dated in the following December was afterwards made and which is the deed of record.

RE-CROSS EXAMINATION.

Q. Did not Mr. King in consideration of services rendered by J. N. W. Blankenship in bringing out Reece Davis and Dan

Justus to you and in taking certain affidavits of certain members of Dan's family and other services rendered by
page 568.] him for the King convey to Blankenship's wife certain real estate in Buchanan County Virginia

A. No sir. Certain land, reserving coal and all mineral rights and rights of way and ground for erecting all sorts of structures, lying on the head of Long Branch, consisting of about 250 or 300 acres was deeded by King to Mrs. Blankenship and this was a matter peculiarly personal to myself. When King won the land in a suit at Harrisonburg from the Blankenships the old man J. N. W.'s father went on the stand and so did Watkins himself—I am not quite so sure about Watkins going on the stand, and testified as to the possession of the land, the absolute truth about it He would not have had to have lied very hard to have made out a possession. As soon as the trial was over I went to the old man and in the presence of many witnesses told him that as long as he lived he would never be compelled to move off the land where he then lived or any land that we had recovered from him in old Virginia so far as King was concerned. We had recovered some $3000. costs against him. I told Watkins Blankenship then or some time after that I wanted him to understand that I had no *disire* to see him move off the land and at any time that he would run out a boundary there such as he might wish to cultivate and use as a range I would see that he got a deed for it, reserving the mineral rights and the large timber; whatever timber there was on the land we took off after that and left only farming timber. When I came back to West Virginia I found this had not been done. A negotiation was then on between a man by the name of Litz and ourselves by which there was to be some exchange of the surface land on Long Branch for the coal on Bull Creek and during this negotiation it held up the *mater* of Watkins land and running it out until it could be decided what would become of that negotiation We finally settled it and then the Watkins land was run out. The deed was made some time within three or four months anyway quite recently. Mr. Watkins Blankenship had been living on the

land all the time since the judgment was taken against him in 1895.

And further this deponent saith not.

V. A. WILDER.

page 569.] GEORGE HATFIELD, a witness introduced by the defendant King after being first duly sworn upon oath testified as follows:

EXAMINED

By Judge Stiles.

Q. You are the same George Hatfield who has heretofore testified in this case are you not?

A. Yes sir.

Q. Where did you spend your boyhood and the earlier years of your life?

A. On Ben Creek until I was fifteen years old and then we moved to McDowell County.

Q. What is your age now?

A. 59 years.

Q. Are you acquainted with the locality about the mouth of Gilbert Creek and if so when did you become acquainted with it and how long have you known it?

A. I have knowed it ever since I was a boy of ten or twelve years old.

Q. At *tht* time was the bottom on the west or left hand side of the creek going down and near the mouth cleared or in timber?

A. It was cleared to the best of my knowledge.

Q. When were you at the mouth of the creek last?

A. I think it was in 1884 or 5.

Q. Did you ever live or have business in that neighborhood within a short distance of the mouth of Gilbert Creek?

A. Yes sir I was there very often, in 1 think in 1858 or 1859 I stayed with my brother just above there and we run a saw mill. The saw mill was 2 and a half miles above Gilbert Creek.

Q. Were you about the mouth of the creek often from 1858 or 1859 on for the next few years?

A. I was there tolerably often about two years.

Q. How does the creek now flow into the river as compared with the way it flowed when you first remember it, that is whether there has or has not been a change in the course of the creek?

A. The change of the course of the way the creek ran into the river *creek* when I was there the last time I dont think there was any change from when I can first recollect if there was I *dident* notice it.

page 570.]

Q. Were you about the mouth of the creek in 1861 or 1862 or along about that time?

A. No I don't guess I was there in 1861 or 1862.

Q. Have you ever noticed any traces along the bank of the creek near its mouth, if so state what kind of trees they are and where situated?

A. Yes sir, they stood along on the bank of the creek, they were some elms and a water birch.

Q. If there had been any particular change in the way the creek entered the river after you were about there in 1858 or 1859 would you likely have noticed and remembered it?

A. Well I believe I would.

Q. Were you acquainted in 1858 and 1859 or along about that time, especially in 1858 with the people of Logan County on the waters of Guyandotte and Sandy Rivers?

A. Yes sir I was acquainted with a good many of them.

Q. I will read to you some of the names of the defendants named in a declaration in ejectment of Josiah Wandall against Evermont Ward and other filed in the United States Court in 1858 and ask you to state where they lived at the time (here reads) Anthony Lawson and James Lawson.

A. He lived at Logan Court House, that is Anthony Lawson and James Lawson lived at the mouth of or up in the mouth of Island Creek?

Q. Warren Alderson

A. He lived at the mouth of Ben Creek.

Q. James Allison?

A. He lived on Ben Creek.

Q. Thomas Buchanan.

page 571.] A. He lived on Guyandotte River not far from the mouth of Spice Creek.

Q. John R. Browning and Jesse Browning?

A. They lived on Island Creek

Q. Lorenzo B. Chambers?

A. He lived on Guyandotte River above Logan Court house about 11 miles.

Q. Mark Dempsey?

A. He lived at the mouth of Ben Creek.

Q. John Ferrell?

A. He lived on Pigeon Creek.

Q. W. W. McDonald?

A. He lived down on Guyandotte River close to the mouth of Sand Lick, I believe.

Q. Humphrey Trent?

A. He lived on the Horse Pen Fork of Gilbert Creek

Q. Eli and Ephram Hatfield?

A. They lived on Mate Creek

CROSS EXAMINATION

By Mr. Campbell.

Q. In what year were you born

A. In 1842.

Q. When did you learn the place of residence of the persons enquired about by Judge Stiles?

A. I have been at their house, pretty near all of them, through my life I *couldent* tell you when I did learn it, I have been at their houses though when I was a boy and *sijce* I have been a man

Q. Were you at the houses of these people before the suit was brought in 1858 by Randall against Ward and others or did you learn of their place of residence after the war?

A. Well I was at some of their houses before the suit was brought and some of their houses since.

page 572.] Q. At the houses of which ones did you visit before the suit was brought?

A. Well I was at Humphrey Trents, and Warren Alderson and John Dempsey, Jim Allison and Ephram and Eli Hatfield, that is all that I can recollect of that I was at before the suit was brought

Q. When was it that you run a saw mill two and a half miles above Gilbert?

A. Why I worked there with my brother, I *dident* own the saw mill it was in 1859 and 1860 that we run the mill

And further this deponent saith not.

GEORGE HATFIELD

1 day.

page 573.] W. L. WILSON a witness heretofore introduced by the defendant King being *against* recalled by said King, testified as follows:—

EXAMINED

By Judge Stiles.

Q. You have heretofore testified to your experience as a surveyor and your *acquaintence* with surveyors marks in timber I will ask you if you have examined a poplar block filed in this *vase* by the contesting defendants claimed by them to be a block from a line tree, the block having been sawed open through what appears to be hacks in the bark of the block?

A. I examined it a few moments ago.

Q. Did you notice and do you observe the black line extending along the block about an inch and a half from the bark beneath the hacks, if so what in your opinion as a surveyor based upon your *acquaintence* with surveyors marks and the growth of timber does that indicate and how is it accounted for?

A. Yes sir I see the black streak there. If it *wasent* for those two hacks in the bark I *wouldent* know what caused it but from those two hacks being in the bark I should infer that it was caused from the hacks.

Q. What if anything does that black line indicate as to the time when the marks were made on the tree?

A. I should think that the growth of timber from that black streak to the bark should give the date of the hacks

Q. Would that be your opinion or is it your opinion as a surveyor and timberman?

A. Yes sir that is my opinion.

Q. Have you counted the annulations indicating the annual growth from the black streak to the bark, if so with what result?

A. Yes sir. I find there are from forty two to forty seven annulations. The light is so bad you cant tell and you would have to have a good glass.

Q. Were you subjected to any criticism by any
page 574.] of the persons adversely interested on account of having gone out to examine the stumps on Race Fork or for having testified in this case or to any attempt to deter you from making such examination or testifying? If so you may state when and how?

A. Why Harry Duncan, two or three days after we came back from up there, I don't know whether he is adversely interested in the case or not, I met him down here on the street and he called me Mr. Wilder and said he heard that I had got to be an expert on the examination of stumps. I *dident* know what he meant at first and then he got to talking about that poplar stump over there on Knox creek, he asked me what ever got into my head to go over there that they had been trying to get some body with some degree of respectability to go and that they never could find any body, that is all I guess.

Q. Was anything said to the effect *to the effect* that you ought to be ashamed of yourself for going or for having anything to do with the King people or anything to that effect?

A. I don't know a day or two after I *ttestified* here I met Mr. Campbell down in front of the hotel and he said I ought to be ashamed of myself, I don't know whether he referred to the King case or not.

Q. What did you at the time understand him to refer to?

A. Why he referred to the testimony I gave here in the King case.

Q. Had you done anything else to Mr. Campbell or done anything that you thought you ought to be ashamed of?

A. Nothing that I knew of.

Q. Did Mr. Campbell refer to anything that you had done or when you had done it or when you had done it in so many words or by any expression?

A. I believe he did say, "for what you done the other day"

Q. Had you shortly prior to that time had any dealings with Mr. Campbell or mixed in his affairs in any way

page 575.] outtside of this case

A. I had some dealing over there at the bank where Mr. Campbell is President, is all.

Q. Was there any trouble about your dealings with the bank or any complaint?

A. None that I knew of.

Q. Who is Harry Duncan?

A. It is Harry Duncan that *stayes* up to Mr. Campbell's office.

Q. Is he the Duncan of Campbell, Holt Duncan?

A. I have always understood it that way.

CROSS EXAMINATION.

By Mr. Campbell..

Q. What sort of dealings did you have at the bank referred to?

A. Why in the first place I borrowed some money from the bank and I have been running an account there ever since, doing ordinary banking business.

Q. What officer of the bank did you deal with in making that loan

A. Mr. Archer, I believe.

Q. Did you ever speak to me about the loan in the bank at any time or in any shape or form?

A. It seems to me like I did over on Third Avenue one day but I wont be positive about it.

Q. What did you ask me about it?

A. Well sir I dont know, I applied to Mr. Archer for the loan and he said he would refer it to Mr. Campbell, and I suppose it was something relative to that.

Q. Do you remember what he said, if anything about the loan?

A. If he said anything it was favorable what he said.

Q. How much was the loan?

A. It was $2000.00

Q. What security was offered for it?

A. G. L. Wilson, of Ceredo, Indorser.

Q. What were you doing with the money you were borrowing?

A. I was using it for a good many purposes, the most of it went in these houses that I was building.

page 576.] Q. Are you certain that I had any knowledge of that loan until after it was made and reported by the cashier to the board of directors along with other paper discounted?

Objected to by the Defendant King. Defendant King here objects to this line of examination on the ground that it is obviously immaterial and improper and seems to be making this the occasion for a collateral *enquirey* into the affairs of some bank and the witness that can have no possible connection with this case and the witness is advised that he need not answer such questions unless he is entirely willing to do so.

A. Why Mr. Campbell must have known it I dont see how he kept from knowing it. I *couldent* say that he did have knowledge of it.

Q. Did that loan have any reference to or anything to do with your trip to Knox Creek or your evidence before Commissioner Graham here in behalf of Mr. King?

A. No it never had anything to do with it.

Q. Do you know whether the loan was made before or after your trip to Knox Creek?

A. It was made after.

Q. Was it before or after you testified before the commis-

sioner

A. I have forgotten when I testified before the commissioner I *couldent* say whether it was before or after, but I believe it was after though.

Q. Who was present when Harry Duncan called you Mr. Wilder and had the conversation you have detailed?

A. There *wasent* any body present.

Q. Was any person present *thst* you remember of when I should have said to you that you ought to have been ashamed of yourself?

A. No there was nobody present.

Q. Do you remember where that was?

A. It was right in front of the Florentine Hotel.

Q. Do you remember how we came to meet there

page 577.] if we met at all

A. Just passing along the walk.

Q. How many surveyors marks did you ever block where the hacks had not penetrated to the wood?

A. I *couldent* answer that question.

Q. Did you ever examine a surveyors mark which had not penetrated the wood?

A. Yes sir I have?

Q. When and where.

Q. I have cut several out on Coal River along about 1893 and 1894 Then in Wayne County I have cut several. I never followed *surveyin* but 3 or 4 years and never blocked as many trees as some men I was mostly acquainted with old hack marks in the lumber business, you would see more *openin* up in one day than you might in a life time following around after a surveyor.

Q. How many blocks in Boon County did you examine and find that the hacks had not gone into the wood.

Q. The ones we blocked there we would nearly always find the hacks. I think maybe one or two, it *dident* exceed two I know, to see how old the hacks were—

Q. Do you mean that you found hacks in the bark in one or

two cases and upon taking a block out you found that these hacks had not gone into the wood?

A. I dont mean that at all. I have *seem* them marked that *dident* go through the bark, it is very common.

Q. How many cases of this kind have you seen?

A. I have seen several cases well twenty-five or thirty *wouldent* be any too many I know.

Q. Do you refer to surveyors marks on line and corner trees in the cases you have mentioned?

A. Yes sir I do.

Q. How many of these twenty-five or thirty cases did you block to demonstrate that the marks had not penetrated the wood?

A. Some four or five.

page 578.] Q. Did you split the block open to see whether the hacks had penetrated the sappy portion of the bark and had left any trace of its age down in the wood underneath the surface or outer portion of the wood?

A. Yes sir.

Q. How many of the four or five *case* did you split open?

A. I split them all open?

Q. Had the hacks in any of those cases touched the sappy portion of the bark?

A. It *hadent* touched the wood, there was no way to tell whether it had touched the sappy portion of the bark or not?

Q. Did you find in any portion of the wood in the block, underneath the hacks any streak in the wood as the result of the blows in making the hack?

A. Yes sir.

Q. How many cases of that kind?

A. I don't recollect of but one case, that was a thick bark chestnut oak.

Q. Where is that block?

A. I *couldent* tell you.

Q. What did you see in the wood under the bark in the chestnut oak?

A. Nothing at all. The bark of the tree was so thick that the force of the blow *dident* extend into the vital part of the bark.

Q. What did you find in the other four or five cases?

A. There was generally a streak of some kind, it was generally black.

Q. Well in those other cases of the four or five what did you find if anything in the wood?

A. There was always a colored streak. I mean that I found in the one that there was no streak at all and in the others there was a streak.

page 579.] Q. How do you account for the outer and *irregylar* black streak in the poplar block about which you testified in your examination in chief?

A. I *couldent* tell you. That seems to have originated from some other cause. That streak runs so irregular, one streak runs with the grain of the wood and the other runs across it.

Q. What in your opinion is the cause of the succession of short colored streaks underneath and somewhat below the upper hacks in the section of the block containing the wooden pins?

A. If you just ask me for my opinion about that that looks very *muck* like that had received a blow when the sap was in the tree, from the *but* of an ax or a rock, it would make that kind of a place

Q. Do not those small streaks referred to in the last question and answer appear in different annual growths of the wood?

A. Yes it does look that way.

Q. Now please take the other sections of the block and say whether or not there are similar streaks in succession below a point immediately under the lower hack, or the one on the beveled end of the block?

A. There are similar streaks there only not as long, they dont seem to have any connection with this other one though.

Q. Which other one do you mean?

A. The long inner streak.

Q. I call your attention to another streak through the block

as shown on both sections equally as distinct but *as* not as black as the one you have referred to and to be found about two inches further in the wood, can you say what was the cause of that streak?

A. There is a slight discoloration in the wood there it *doesent* show as distinct as this one here under the lower hack on the section containing the pins. The annulations of the wood run parallel with the *surfact* caused from this lower hack and seem to stop at the black streak.

page 580.] Q. How do you account for the two *section* or portions of the black streak you refer to, they seem to have black lips with a white tongue between them?

A. It is a freak of nature that I cannot explain.

Q. How many annulations do you find between the two?

A. I will say that it runs from one to two annulations between them.

Q. Is not the lower lip equally as dark and distinct as the upper one?

A. I think so.

Q. The white streak or tongue between these two black lips seems not to have been effected in any way does it but resembles other portions of the wood?

A. I think that in between those two streaks is kind of *snearly*, it seems to me like it is denser wood than the other.

Q. If this discoloration was the result of a blow might it not have made by a falling tree and not by the hacks which seem not to have penetrated the thick bark.

A. It could have been done

RE-DIRECT EXAMINATION.

Q. If a tree had fallen against this block across these marks with sufficient force to produce a discoloration would it not likely have skinned off the bark and removed or defaced the hacks in the bark so as to make them indistinguishable as marks?

A. I think the marks would be less conspicuous if it had been hit by a tree.

Q. State in your own way and as fully as you please your reasons for thinking that the black streak underneath these marks was caused by the hacks in the bark in the tree

A. First I see two hacks in the outer bark of the tree and I infer from this that there must be some defect in the wood caused by these hacks. About one and a half inches from the bark I see a black streak and the most notable streak and

page 581.] most likely to have been caused from the hacks, first because it is located principally between the hacks and second from the hack next to the rounded end of the stick there is an indentation or hole in the wood *immidiately* under the hack and the annulations of the wood run parallel with this to the black streak and stop

Q. By the annulations running *paralel* with the indentation as far as the black streak I understand you to mean that the waves in the grain conforming to that *indenttation* extend to that black streak and no further, is that correct?

A. That is what I mean

Q. In your experience as a surveyor and timberman do you find that a hack or bruise of the bark of a tree such that its force is felt in the live bark and on the outer sap of the tree will be followed in after years by a discoloration or defect in the wood at that place, state what your experience is and your understanding of it?

A. My experience has always been that when a tree receives a blow sufficient to penetrate the bark of the tree that it always leaves some defect.

And further this deponent saith not.

W. L. WILSON.

1 day.

page 582.] Resumed proceedings this the 24th day of January, 1903, in behalf of the defendant H. C. King, at the city of Huntington, W. Va., pursuant to agreement.

Present: Same attorney as heretofore.

The defendant Kings offer in evidence the following documents:

Certified copy of an amendment to the entries made the 10th.

and 13th. of October, 1794, referred to in the certificate of survey in the 500,000 acres, which amendment is *date* October 28th, 1794,

Certificate of survey of 40,000 acres made for David Paterson October 20th, 1794.

Certificate of survey of 57,000 acres made for Thomas Wilson, January 20th, 1795.

Deposition of William D. Sell, appearing at pages 339 to 351 of the printed record and on file in this case and the several copies of entries, surveys, grants and Auditors certificates filed in this case heretofore and marked Exhibit "K. D., 1 to K. D. 17 inclusive, copies of which with sundry typographical errors appear in said printed record from page 360 to page 386 inclusive

Certificates of the Auditor of Virginia relative to 243 acres charged in the name of Edward Crawford, dated October 9, 1895.

Copy of the declaration and amendment to declaration in the action of ejectment of Henry C. King vs. Joshua Justus, and others, in the Circuit Court of the United States for the Western District of Virginia; and of the stipulation of the parties thereto relative to trial of said cause and the verdict rendered upon the trial of said cause as to J. N. Watkins, S. A. D. Baldwin

page 583.] and Eli Hurley.

The sundry certificates of the Auditors of Virginia and West Virginia and transcripts from the records in their respective offices referred to in the answer of defendant King to the answer of C. W. Campbell and others and which will be filed with the commissioner or Clerk of the Court.

The affidavit of John A. Sheppard and the answer of Maynard F. Stiles thereto, filed in the Circuit Court of Wyoming County in the proceeding therein entitled State of West Virginia against Maynard F. Stiles, to be found at pages 18 to 26 and 30 to 47 respectively, and the judgment of the Circuit Court at page 48 of the printed record of said proceedings upon writ of error of the Supreme Court of Appeals of West Virginia.

And a final decree (copy of) of said Supreme Court of Appeals in said cause.

The contesting defendants object to the filing or considering as

proof for any purpose the alleged affidavit and answer thereto or the writ of error thereto and the order of the Supreme Court thereon.

Counsel for defendant King furnishes to the Commissioner the transcript *containg* the said affidavit and answer and reserves the right if the motion of said King to strike out the testimony of the said Sheppard relative to a stipulation and *maters* growing out of the same be overruled, to introduce such further evidence upon said subject if it be deemed material as he may be hereafter advised.

The contesting defendants object to any such reservation and insist that if the defendant King has any evidence to interpose on that subject to introduce it now and not piecemeal the matter.

Also filed certificate of S. V. Kelley, surveyor of Tazwell County, Virginia, relating to land of Shadrack White and J. N. Watkins in Buchannan County.

page 584.] And now this the 11 day of February, 1903, V. A. *Wiler* a witness heretofore introduced by the defendant King, by consent of the parties is permitted to make the following correction or statement in explanation of his former testimony:

EXAMINED

By Judge Stiles:

My counsel had not intimated to me before going on the stand, that he could examine me as to the value of the Monterey and Mexican Gulf bonds given in exchange for the West Virginia lands. The circumstances occurred some ten years ago and my memory without consulting *datar* was not clear. I thought the transaction took place in the spring, but corrected my testimony making it in the fall. The *recoolection* I had with reference to the sale of any bonds went back to the early spring of that year and prior thereto; whatever sale of bonds took place were not in the fall, I had no connection with the road in the fall of 1893. The Societe General of France and Bank of Brussels owned the road. I do not know what the bonds could have been sold for in the fall of 1893. If I remember aright the Societe General was making a financial reorganization of the road, and the bonds were being exchanged for

certificates. I am under the impression that in the sale of the road some two years ago to the Mexican Central, that the bonds or certificates were put in at forty-nine cents, and the floating debt paid off or assumed. What was paid for the stock I do not know. I have been informed that the management of the road by the Societe General was not able and progressive, and the road was allowed to run down, and its value thereby decreased. What I seek in my testimony to say is that the bonds given in the deal for this land were not worthless trash as the contesting defendant would imply, nor was the enterprise of building and financiering the road to a completion one in which I personally feel anything but pride, it was an honor to have been connected with it, and I consider it a monument to the integrity and ability of all connected with the enterprise, and though in some measure disaster met the enterprise at a time when the greatest financial houses in the world were going to the wall no discredit whatsoever attaches to anyone connected with an enterprise which has been a vast benefit and honor to the Republic of Mexico. I know of no road in Mexico that has back of it more of natural resources and greater hopes *or* future prosperity than the Monterey and Mexican Gulf Railroad.

page 585.]

I concede that I am in error in stating that sixteen thousand dollars was paid to Kountze. Sixteen thousand dollars was the amount paid at the time, but being informed by counsel for the contesting defendant of my error I now state upon the information given to me by them that the amount paid to Kountze was only seven thousand dollars and that it was paid in discharge of a debt for borrowed money contracted by G. W. Armstrong.

And further this deponent saith not.

V. A. WILDER.

The parties having no *furnther* evidence to produce before the commissioner it is ordered that these proceedings be now closed upon the question of the location of the Morris Grant given under my hand this 11 day of February 1903.

J. T. GRAHAM,
Commissioner.

STATE OF WEST VIRGINIA,
CABELL COUNTY, to-wit:

I J. T. Graham, Commissioner in Chancery of the Circuit Court of said County do hereby certify that the foregoing
page 586.] depositions of Andrew Baker, Miles Lester, Levi Lester, Wane Justus, W. A. Justus, W. A. Lester, Riley Lester, J. H. Lester, G. S. Stone, W. D. Sell, Frederick Trent, R. P. Spratt, F. S. Stafford, G. S. Stone, recalled, Thomas J. Mathews, G. S. Stone, again recalled, N. L. Reynolds, George Fuller, Hiram M. Smith, John Charles, Calvin Lester, Mrs. Sarah Charles, Robert Justus, Samuel Justus, A. J. W. Ellis, John R. Browning, Calvin Burgess, S. S. Altizer, William W. McDonald, Alexander Trent, Edmund Browning, C. H. Gore, Simpson Ellis, Henry Daniels, James McCoy, Peyton Johnson, Daniel Wolford, Joseph Simpkins, Levi Lester, re-called, Historic Sketch of death of Joseph Gilbert, Allen J. Sheppard, W. B. Meade, John B. Wilkinson, Andrew Baker, recalled, George Charles, Moses Charles, Hiram Lane, Joshua Justus, Hiram Lane, recalled, Andrew Justus, James R. Justus, David Carter, Daniel Blankenship, Larkin Smith, Thomas Carter, Eloyd Hatfield, Jacob Lester, Alfred Wolford, A. C. Stacey, Harlan Smith, James R. Justus, Hiram Hall, H. M. Coleman, Adam Justus, Harrison Justus, Hiram Lane, again recalled, Jackson Lester, Jefferson Lane, H. M. Coleman, recalled, J. E. Hall, Liftwidg Justus, Floyd Justus, Isiah Lane, W. W. Justus, J. S. Smith, K. H. Justus, John Justus, Wiley Justus, Eligah Estep, John C. McCoy, F. A. J. Ferrell, Henderson Varney, Isabel Rutherford, J. H. Lester, recalled, Curtis Lester, Samuel W. McInturf, Cora McInturff, Claude L. Gaujot, G. S. Stone, again recalled, Thomas J. Mathews, recalled, Curtis Lester, recalled, George Childers, Levi Lester, again recalled, Henry Blankenship, Levi Blankenship, Jacob Cline, Statement of Joseph M. Sanders, Z. T. Vinson, C. W. Campbell, JOHN A. Sheppard, R. T. W. Duke, Jr., Eugent Elicott, Edgar P. Rucker, C. Crane, J. S. Thurman, Thomas Boggess, SR., Thomas Boggess, Jr., G. S.
page 587.] Stone, again recalled, Thomas J. Mathews, again recalled, J. L. Thornburg, William N. L. Reynolds, re-

called, Samuel Collins, Frank C. Osborne, N. Coler, Jr., and Luther Koontze, contained in Volume 1, and endorsed "State of West Virginia vs. H. C. King and others. Testimony of the Contesting Defendants and the foregoing depositions of James M. Gibbony, B. U. Morgan, A. B. Workman, Willard Morgan, R. L. Brewster, Lewis Bailey, Hiram Christian, E. M. Senter, James Allison, W. B. Higginbotham, and recalled, F. M. Deskins, Connaly Blankenship, *Geroge* Hatfield, Rhodes D. Trent, Rhodes D. Trent, recalled, J. R. Henderson, Noah Burchfield, W. C. Reddy, Charles V. Bromley, B. Mills, Thomas Boggess, W. L. Wilson, G. A. Deskins, G. L. Counts, Mrs. Margaret Manns, D. L. Auvil, H. K. Shumate, Agatha Brown, Roxelena Trent, W. A. Forsyth, Thomas M. Robinett, J. W. Staffor, L. G. Stacey, James M. Charles, Reece Davis, James Hatfield, Flora ANN Hatfield, A. L. Robinett, Julina Justus, Elvira Justus, Fred Justus, John Justus, Andy Justus, Adam Justus, John J. Justus, Loventia Stafford, Daniel Justus, Sennett Justus, Morgan Justus, W. W. Bawldwin, S. A. D. Bawldwin, Ezekiel Canterbury, George W. Morgan, Lafayiett Justus, Wayne Justus, Samuel *Justsu*, Jackson Bailey, J. C. Christian, Daniel Harmen, S. M. Graham, W. D. Sell, Statement of Samuel Graham, Statement of Commissioner, of view of premises, W. D. Sell, recalled, Westley Mollohan, James A. Holly, V. A. Wilder, *Geroge* Hatfield, recalled, W. L. Wilson, recalled, V. A. Wilder, recalled, contained in Volume 2, and endorsed "State of West Virginia vs. Henry C. King and others. Testimony of the defendant H. C. King were duly taken before me pursuant to the notice given in the manner required by the decree of *refference* at the time and places set forth and stated in the foregoing proceedings.

page 588.] And I do further certify that the foregoing proceedings contained in volumes 1, and 2, as aforesaid, is a true and correct record of all the proceedings had, and depositions taken by me in this case. And I further certify that all the exhibits filed before me in these proceedings were duly endorsed and signed by me as Commissioner and are returned with and made a part of these proceedings.

I further certify that at the time of taking the aforesaid depo-

sitions contained in said volumes 1 and 2, I was Commissioner in Chancery of the circuit court of Cabell County West Virginia, and was authorized to take the same by a decree of reference entered in the Chancery Cause pending in said court wherein the State of West Virginia is plaintiff and H. C. King and others are defendants.

Given under my hand this the 27th day of February, 1903.

J. T. GRAHAM,
Commissioner.

page 589.]

I, R. B. Parrish, Clerk of the Circuit Court of Marion county, West Virginia, do certify that the foregoing volume is a correct copy of the depositions taken on behalf of defendant King, before Commissioner John T. Graham, in the Chancery cause of State of West Virginia vs. Henry C. King et als. and returned with the other evidence by said Commissioner with his report, being one of the volumes of depositions referred to in my certificate to the transcript of another portion of the record of said cause, containing the report of said Commissioner and certain pleadings, decrees and proceedings therein.

Given under my hand this the 7th day of November, 1907.

B. B. PARRISH, *Clerk.*

DEPOSITIONS

Of "Contesting Defendants," or Defendants Other Than Henry C. King Taken Before John T. Graham, Commissioner.

TRANSCRIPT

The State of West Virginia,
vs. *IN CHANCERY.*
page 1.] Henry C. King and others.

Pending in the Circuit Court of Cabell County, West Virginia.

Proceedings had and depositions taken before me, John T. Graham, Commissioner in Chancery of the Circuit Court of said county, on this the 22nd day of April, 1902, under the decree of reference entered in the above styled cause at the July Term 1901 of said court, and pursuant to notice duly published as required by said decree, once a week for four successive weeks immediately prior to this date in the following newspapers, to wit: The Huntington Advertiser, of Cabell County; The Southern West Virginian, of Mingo County; The Logan County Banner, of Logan County; The McDowell Recorder of McDowell County and the Wyoming Herald, a newspaper of general circulation published in Wyoming County, as will more fully appear by a copy of said notice with said decree of reference as the same appeared and was published in each of said news papers, with the certificate of the editor of each respective news paper showing the publication thereof

in his said paper, as required by said decree, which with affidavits annexed showing the posting of said notices on the front door of the Court House of each of said counties for a like period of time, are returned with and made a part hereof.

Met at the office of John T. Graham, Commissioner in Chancery, in the City of Huntington, Cabell County, West Virginia: PRESENT: John T. Graham, Commissioner in Chancery; C. W. Campbell and Edward C. Lyon, attorneys for contesting defendants.

Judge M. F. Styles, attorney for the defendant H. C. King.

On motion of the defendant Henry C. King and
page 2.] with the assent of the parties present these proceedings are continued until the 7th. day of April 1902, to meet on said date at the town of Williamson, Mingo County, West Virginia, at 9 o'clock A. M. at such place in said town as the Commissioner may on said day select.

J. T. GRAHAM,
Commissioner.

CAPT. T. J. MATHEWS, a witness summoned for the defendants Reed, Trustees, and others proved one day and 88 miles attendance, amounting to $5.40

Met this the 7th. day of May 1902, at the town of Williamson, in the County of Mingo, pursuant to adjournment at the City of Huntington on the 22nd. day of April, 1902: PRESENT: C. W. Campbell and Edward C. Lyons and John A. Sheppard attorneys. M. F. Styles attorney for the defendant, Henry C. King not being present a recess was taken until one o'clock, P. M. at which time he appeared. And J. S. Marcum and J. S. Miller attorneys for the State of West Virginia.

Thereupon M. F. Stiles attorney for the defendant
page 3.] King, objected to the introduction of any evidence on the part of any person other than the State and defendant King.

ANDREW BAKER a witness of lawful age introduced in

behalf of the *of the* defendant for whom Shepherd & Goodykoontz, Edward C. Lyon and Campbell Holt & Duncan or any of them appear, (a list of said defendants will be filed with the commissioner), after being first duly sworn, upon *oth destified* as follows:

EXAMINED

By Mr. Campbell.

Q. Please state your age residence and occupation?

Age 72 years, residence Buchanan County, Virginia, on Knox Creek and by occupation farmer.

Q. Are you *aquainted* with *Danial* Justice and do you know where he resides on the right fork of Race Fork of Knox Creek?

A. Yes sir.

Q. How long *havre* you lived on the waters of Knox Creek?

A. With the exception of four years about fifty years.

Q. What four or five years were you out from Knox Creek?

A. It was during the time of the war and I was out one year since.

Q. When were you at Daniel Justice's house the last time?

A. It has been about two years since I was at his house.

Q. Do you know the little cabin which *Danial Justice* first built on that fork and the one in which he now lives?

A. Yes sir I saw two houses—the one he lives in and the one he first built.

Q. Do you know the little branch that comes into the right fork of Race Fork near *Danial* Justice's present house or home coming in from the *from the* right hand side *doing* up?

A. Yes sir.

Q. Do you know how corner trees and line trees are usually marked, if so state how?

page 4.] A. I suppose I do—the corner trees are marked three hacks and line trees are marked two side hacks.

Q. Did you ever see any timber marked as a corner standing

near the present residence of *Danial* Justice and near the little branch above spoken of?

A. I did.

Here M. F. Stiles attorney for the defendant King *stats* he is informed that much surveying has been done during the several months past since the entry of the decree of reference in this cause by the parties in whose behalf the present witness is offered: that such surveying has been done without an order of the court or the *commisioner* and without notice to Mr. King and his counsel, and in secret and that said surveying has reference to the trees *refered* to by the witness, and thereupon moved the *Commisioner* to suspend the hearing until such time as the said King may have such surveying done and such investigation upon the ground in conjunction with the opposing parties and under the supervision of the *Commisioner* if he *desirs* it, as will enable him properly and intelligently to examine the witness and demonstrate the non-*existance* of any marked corner trees, such as are *saught* to be established by the opposing parties, it being the belief of Mr. King and his counsel that such trees are *purly* fictitious so far as concerns their being marked trees or corner trees.

Which motion is overruled by the *Commisioner*.

And thereupon the counsel Mr. Campbell proceeds with the examination of the witness.

Q. State as near as you can when you first saw those trees so marked?

A. Well sir it was *betwix* forty one and forty six years, when I first saw them.

Q. Was it before or during the late civil war or during the late civil war between the *stats?*

A. It was before it.

Q. Did you ever see them a second time if so how long ago?

A. Yes sir I saw them different times as well as
page 5.] I remember it was about fifteen or sixteen years *somewheres* about that.

Q. Where did the trees stand with reference to the little

branch spoken of and the present residence of *Danial* Justies?

A. As near as I can guess at it, I never measured it, it was about 175 or 180 *yeards* from the main branch.

Q. How close to the little branch?

A. It was some seven or eight steps from the little branch on the left hand as you go up.

Q. State the kind of timber and number of trees marked?

A. As well as I remember I saw two poplars and a sugar tree.

Q. Where did the sugar tree stand with reference to the two poplars?

A. The two poplars stood some steps apart and the sugar tree stood *betwix* them like.

Q. Did you on either occasions observe any other tree marked in any way, if so where did it stand and what kind of timber was it and how was it marked?

A. Yes sir I saw a beech. It stood as well as I remember about fifteen or twenty steps below the poplars and sugar on the same side of the drain. It seemed to be marked with a side mark-two hacks.

Q. In what direction did these two hacks point?

A. They was on the side of the beech next to the drain.

Q. How were the *Poplars* and sugar trees marked?

A. They seemed to be marked on the East and North side.

Q. How many hacks on each side?

A. They was marked with three hacks on each side.

Q. What was the *appearence* of these marks as to age and size?

A. The hacks seemed to be very old as nigh as I could tell they were made with a small ax or tomahawk.

page 6.] Q. Have you in the *cours* of your life observed many line and corner trees, both of ancient and recent marking.

A. Yes sir I have run right smart land myself—I have had it done.

Q. Do you remember to have seen any corner marks of greater age than these on the poplars *ever* and sugar trees appeared to be?

A. I don't know that I ever did for they were very old and appeared very old when I saw them I was not very old when I saw them.

Q. Did *their* appear to be any difference in age or size of the marks upon the beech on one hand and the poplars and sugar on the other?

A. Well sir the marks *showen* plainer in the poplars than they did in the beech and sugar trees they seemed to be growed over like.

Q. Did the hacks on the tree appear to have been made with the same instrument or one of the same size?

Question objected to by attorney for the defendant King, as suggestive.

A. Well I *couldent* tell about that I *wasent* thinking about anything like it and *wasent* paying any attention to it.

CROSS EXAMINATION by M. F. Stiles attorney for defendant Henry C. King.

Q. On what part of Knox Creek do you now live?

A. I live on the little fork that runs in on the same side above the Race Fork, called the Pounding Mill Branch.

Q. How long have you lived there.

A. I *haint* lived there but a short time. I moved there about the 1st. of last November.

Q. How far is that from where Dan Justice lives.

A. It is about two miles and a half.

Q. Where did you live before you moved there.

A. I lived on main Knox.

Q. At what place?

A. Near Hurley Post Office.

Q. Near what branch is that?

A. There *aint* any branch there but a small drain.

Q. How far is it from the mouth of Race Fork?

page 7.] A. A little over a mile above.

Q. How long had you lived there?

A. Five or six years.

Q. Where else on Knox Creek did you live and how long?

A. I lived on the ridge *betwix* where I now live and the Lesters Fork of Knox. I lived there a long time—I raised a family there.

Q. Do you know J. M. Watkins?

A. Yes sir.

Q. How long have you known him?

A. I have known him for a long time.

Q. Do you know A. W. Campbell?

A. I have seen him but am not much *aquainted* with him.

Q. Do you know John S. Dotson?

A. Yes sir.

Q. How long have you known him?

A. I have known him a long time when I seen him.

Q. Do you mean that you only know him by sight?

A. Yes sir. I know him when I see him.

Q. Do you know him to talk with him as other neighbors.

A. Yes sir.

Q. Do you know Steve Baldwin.

A. Yes sir.

Q. How long have you known him.

A. I have not been *aquainted* with him for many years but I know him when I see him.

Q. Do you know the Justice's and the *Charleses'*, who live on Knox Creek?

A. I know some of them.

Q. You are pretty well *aquainted* with the people that live on Knox Creek for the past Twenty five years.

page 8.] A. Some of them I am and some of them I *aint*.

Q. In what year were you born?

A. In 1830.

Q. How old were you when you *when you* first saw the tree you spoke of?

A. I *couldent* tell because I *couldent* tell exactly the year I did see them.

Q. Can't you tell independently of that about how old you were or about how big you were?

A. Well I was up in twenty.

Q. How large were the trees?

A. Well there was one a good big tree, and the other one *wasent* so large.

Q. Which was the big tree?

A. The one that stood above the well as I remember.

Q. How big was that?

A. I *couldtent* tell I *dident* measure it but it was a good big tree.

Q. Was it twenty inches or thirty inches?

A. It might have been bigger and it might not have been so big.

Q. Well give your best *impresions* of the *diamater* in inches?

A. It must have been thirty inches or upward.

Q. What kind of tree was the big tree?

A. It was poplar.

Q. What was the size of the other poplar?

A. It was not so large. To guess at it I think it might been twenty or twenty two inches.

Q. How about the sugar tree?

A. It was a common sized sugar tree. It might have been fourteen or fifteen inches. It might have been a little larger or a little smaller.

Q. What direction was the big poplar from the small one. North, south, east or west?

page 9.] A. The two poplars stood up and down the drain like, and if I am not mistaken that drain running North and South I never saw a compass set but it appeared like it run North and South.

Q. How was the big poplar north or south or east or west from the sugar tree—give the direction according to the points of the *compas* as near as you can?

A. If the drain lay north and south it lay north.

Q. What direction was the small poplar from the sugar tree?

A. It would have been on the south side of the sugar tree if the branch lay the way I *thaught* it did.

Q. Can you tell how the drain does lie at that point?

A. No sir I can't unless I see the *compas* on it?

Q. You don't know the points of the *compas* at that point?

A. No sir I never *seed* it set there.

Q. Then, this tree might be West instead of north or south from the sugar tree?

A. I don't think it could have been exactly that way the *compas* might vary one way or the other there and might deceive me.

Q. By that you mean a person might get turned about and be mistaken in the points of the *compas?*

A. I might be mistaken in the nature the way the land *layes* there.

Q. Did you ever pay any attention to the points of the compass at that place.

A. No sir.

Q. Which side of Race fork does the drain come in, which side going up the fork?

A. It comes in on the right hand side as you go up.

Q. How far from the mouth of the drain did these trees stand?

A. As nigh as I could guess at it they stood about 175 or 180 yards.

Q. Were they on the upper or lower side of the drain?

A. They was on the upper side of the drain.

page 10.] Q. How far is the mouth of the drain from where Dan Justice now lives?

A. It *ant* but a small distance. It may be sixty or seventy yards and it may be a little further.

Q. What was the character of the bark *of the bark* on these poplars?

A. As well as I can remember it was not the thick kind of bark/ it was the common kind of poplar bark.

Q. Was it *smoth* or rough?

A. It was just common poplar bark. Not the thickest kind or the *thinest*.

Q. Describe the *appearence* to the marks, how they looked at the time you first saw them.

A. Well sir they were very old looking marks the first time I ever saw them.

Q. How far apart were the hacks on the trees?

A. Well I *couldent* tell *axactly* about that they were just common hacks like you would hack for a corner.

Q. About how many inches were there between the hacks?

A. I *couldent* state that.

Q. Well were there two or six or a foot?

A. Well there were just common hacks apart just like you would hack for a corner?

Q. About how high above the ground?

A. They was just common they *wasent* very high just like a man would stand and *strik* with something.

Q. You can estimate it in feet from the ground?

A. It might have been three feet and it might have been over.

Q. Could you see the cut of the ax in the bark?

A. I could in the poplar but then in the sugar it seemed to be rather growed.

Q. When did you see these trees last?

A. It has been about fifteen or sixteen years, *somewheres* about that time.

page 11.] Q. How did you happen to see them for the first time?

A. Well I was looking after a land line.

Q. What line was that?

A. It was the line of the survey known now by the name of the Stuart Survey, it *wasent* of that name then.

Q. What was the name then?

A. It was the Coleman Survey—Danny Coleman.

Q. How many acres?

A. I don't know.

A. How did you happen to see them the next time?

Q. I was just a passing through there and happened to think about them when I got close to them.

A. Did you see the marks at that time?

Q. Yes sir I saw the marks just as I walked a past. I *dident* examine them *cloasly* at that time.

A. About what year was that?

Q. I can't state what year it was it has been fifteen or sixteen years *somewheres* along there.

Q. When were you there last?

A. I *havent* been to the corners since then. I have been to *Danl* Justice but *havent* been to the corners.

Q. How long *aho* was that?

A. It may have been two years.

Q. Did you ever *here* anything about the King land Suits over there in Buchanan County?

A. Yes sir.

Q. Heard them talked about a great deal?

A. Yes sir they are talked about a good deal in that part of the country.

page 12.] Q. That talk has been going on for six or seven years *hasent* it?

A. Well it has been going on for some years I *couldent* state how long. It has been talked *amoung* the people.

Q. You have heard of the case being tried over the King lands in the United *Stats* Court?

A. Yes, sir.

Q. Did you ever say anything to J. M. Watkins, or Mr.

Baldwin, or the other parties who were interested in those suits about these trees?

A. Not as I remember of I *havent*.

Q. Do you know anything about Mr. Samual Graham surveying lines through that country, in the neighborhood in Race Fork, three or four years ago?

A. I *dident* know it *withim* myself but I heard it spoken of but not with in that time—it seems to me it has been longer than that.

Q. Did you *here* at that time or understand what he was doing or what line he was running?

A. If I understand anything about the line it has slipped my mind. I heard of him running the line along through *their*.

Q. Did you know or hear for whom he was doing this?

A. No sir I *dident*. If I heard it I don't now remember. I might have heard it spoken of but don't remember.

Q. Could you go to the trees you have spoken of now and find them?

A. Yes sir I *supose* I could if they were not cut down.

Q. If they are cut down, could you find the place where they stood?

A. I expect I could or near about the place.

Q. If they are cut down and the stumps remain could you identify the stumps?

A. I expect I could if the stumps are *their* or about the place.

Q. Would you be willing to go with some one and show the place?

A. I don't know that I would sir I *ant* able to travel about much and it is over the hill right smart.

Q. How far do you live from Dan Justice's?

page 13.] About two miles or two miles and a half it may be a little further and it may not be so far.

Q. How far do you live from here?

A. I don't know *ho* far it is?

Q. It is fifty miles *isent* it?

A. It may be and *It* may not I came in the night most of the way and don't know how far it was.

Q. How did you come from your home?

A. I came down Knox Creek to the line of the railroad and down the railroad.

Q. Did you walk or ride to the railroad?

A. I came on the Dinkey.

A. I *dident* have to go but a short *distande;* I rode horse back *untill* I got to the Dinkey.

Q. How near to Dan Justice's do you pass in going home from here?

A. It is a right smart piece. I don't know exactly how far it is but it is six or seven miles up Race fork.

Q. It is further than that, if it *ant* I am deceived in it.

A. Couldent you ride a horse from the mouth of the creek up to Dan Justices, you seem to be quite a strong man for your age?

A. I don't ride scarcely any. I ride aside and would not undertake it.

Q. Will you go if I will furnish you a good horse with a side saddle or if we will have you carried in a litter by hand and pay you for your time?

A. No sir I *wouldent* go. I have told you what I knowed about the timber and you can take that as you have got it.

Q. Do you own any land upon Knox Creek?

A. No sir.

page 14.] Q. With *whome* do you live?

A. My wife owns *aacrap* where I now live.

Here M. F. Stiles, attorney for the defendant Henry C. King moves to strike out all the testimony of the witness and renew his motion for adjournment, for the reason heretofore stated.

Which motion for adjournment is *overrulled* by the *commisioner.*

And further this deponent saith not.

ANDREW BAKER.

Witness claims 1 day
Attendance and 74 miles.

MILES LESTER, another witness on behalf of the same defendant, after first being duly sworn upon oath testifies as follows:

EXAMINED
By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age 52 years, residence, Buchanan County, on Rock Lick Creek, occupation farmer.

Q. Are you *aquainted* with *Danial* Justice and the place where he now *live* on the right fork of the Race Fork of Knox Creek?

A. Yes sir.

Q. How far is your home from that of *Danial* Justice?

A. About five miles I reckon.

Q. Did you ever see any marked timber trees standing near the present home of Daniel Justice, if so state when for the first time and the number and kind of trees?

A. Yes sir I seed a poplar and sugar marked there? About fourteen to fifteen years ago I reckon.

Q. Where did the poplar and sugar tree stand with reference to the little drain *comming* into the right fork near Dan Justice's house?

page 15.] A. I reckon it was about 175 or 185 or *maby* 185 yards from the main Race Fork.

Q. How far from the little drain and on which side?

A. Well sir I guess it was about forty steps.

Q. How were these trees marked?

A. They were marked as corner trees as I took them to be corner trees.

Q. How many hacks did they have in them?

A. There was three hacks to the side.

Q. In which side were they marked with three hacks?

A. They were hacked on the north and east sides.

Q. What was the *appearence* of *thes* trees in respect to age?

A. They was old looking hacks and very old to me.

Q. Are *thes* trees still standing?

A. No sir. I helped Daniel cut the poplar down and the sugar tree was just a stump, I never paid any big sight of attention to the *hights* of it it might have been fifteen or twenty feet or maybe thirty.

Q. Who cleared the land where these trees stood?

A. I *supose* Danial Justice cleared it.

Q. About how long ago was it cleared?

A. It *as* four or five years I reckon I *wouldent* say just how long.

Q. What was the *occation* when these trees was cut down and who were present?

A. I reckon he just cut them down to put them out of his way nobody was present but myself and him.

Q. Do you remember the season of the year when the tree was cut?

A. It was in December I think.

Q. Was *their* any people working there at the same time that you *an* Danial Justice cut the Poplar down?

A. No sir not that day they had been.

Q. How long before.

A. The day before. He had a chopping on Christmas day and the next day I went over there and he had me help him cut this tree down as I chopped left which was contrary to the way he chopped.

page 16.] Q. What was the size of the poplar you helped to cut?

A. Why it was some thirty four or five inches.

Q. Did you ever point out the stump of that poplar to any one if so when and to whom?

A. Yes sir I reckon it was this last August a year ago. I pointed it out to Mr. Campbell here and Mr. Gaujot and another *Gentlemen* I never learned his name.

Q. I point you t. Mr. John A. Shepherd who is present and ask you if he is the other party who was present at that time?

A. No sir I pointed it out to Mr. Shepard but I *dont* know whether the other Gentlemen was present at that time or not.

Q. Do you know Harve Charles and if so was he present at Danial Justices on that occasion when the stump was pointed out?

A. Yes sir I *supose* he was.

Q. Was the location of the sugar tree pointed out by you at the same time and to the same parties?

A. Yes sir.

Q. Did you observe on any other occasion another poplar stump near the bank of the little drain and which was pointed out by others and said to have been marked as a corner?

M. F. Stiles objects to so much of the question as relates to what was said by others.

A. Yes sir.

Q. Where was the location of the sugar tree with reference to these two poplar stumps.

A. It was kind of between the stumps.

Q. In what crops has this field been cultivated since these trees were cut down?

A. Corn. some corn and some oats *wouldent* say that the oats reached the stump

Q. What became of the *trees* that was cut from page 17.] this poplar stump?

A. I *supose* Danial burnt it.

Q. Judging from the *appearence* of the hacks on the poplar and sugar tree, what sized instrument, in your opinion, were those marks made with?

Question objected to by Mr. Stiles attorney for H. C. King.

Q. What was the *appearence* of the marks as to size on the poplar and sugar tree?

A. It was old and looked to me like it was very old and the poplar looked to me like it was with a small hatchet and the sugar tree was all spread out and *sorter* covered the side of the tree. The sugar tree had growed so that I *couldent* tell what kind of a tool had marked it?

CROSS EXAMINED

By M. F. Stiles Attorney for Henry C. King.

Q. How could you tell the mark on the sugar tree was a corner mark?

A. It was marked in imitation of a corner with a tool or an ax or what it had been cut with.

Q. If this scar had grown all over the side of the tree so that you *cant* tell anything about it, how can you swear it was marked as a corner?

A. It was marked in imitation of a corner there was the print of the ax, or hatchet or whatever it had been cut with.

Q. What was the *appearence* of the marks on the poplar could you see the cut or gash?

A. Yes sir.

Q. How far apart were the several marks on either side of the tree?

A. I *couldent* tell you I never measured it.

Q. To the best of you judgment?

A. I guess it was up to about half way around the tree from one hack to the other.

Q. How far apart were the hacks that were on the same side of the tree?

A. They were some eight or ten inches I guess.

page 18.] Q. How did you come to see the trees first fourteen years ago?

A. I was looking after a piece of *vacent* land.

Q. Which was farther north the poplar tree or the poplar stump?

A. The poplar stump I reckon.

Q. How large was it in diameter?

A. I *coulde.t* tell you as I paid not attention to it it may have been two feet or bigger.

Q. Do you know in what year the poplar was cut down?

A. I *dont*—it was cut about four years ago this December *comming* or five and I *dont* say which.

Q. What log is that you think Dan Justice burned up?

A. It was the one I helped him cut.

Q. Was that a sound tree? How tall was it.

A. *I* was a sound tree. I *couldent* tell you how tall it was.

Q. How did you happen to be there last August pointing out these stumps

A. Danial Justice sent after me and I went over there.

Q. Were there any measurements made at that time.

A. I *couldent* tell you, if there was I *dont* recollect it.

Q. Did you see any one have a *compas* or surveying instrument of any sort.

A. *YEs* sir them men had I *supose* a little pair of *compas.*

Q. How far was the poplar tree you cut down from the poplar stump.

A. It was some twelve or *or maby* fifteen steps I never measured the distance.

Q. How far was the sugar stump from the poplar you cut down?

A. It might have been six or eight steps or *maby* not so far or *maby* a little further.

Q. Could it have been as far as ten steps?

A. I *couldent* tell you?

Q. How far was it from the other poplar stump?

A. I *couldent* tell you, how far as I never measured it, it

could have been four or five steps or *maby* on a little further.

page 19.] Q. Are the stumps that you have spoken of still remaining there?

A. I *supose* the poplar stumps is the sugar tree I guess it burnt out. there might be some roots there for what I know.

Q. How large was the sugar tree the last time you saw it?

A. It might have been thirteen or fourteen inches through or *maby* bigger.

Q. What was the diameter in inches to the very best of your judgment, get it as exact as you can?

A. I *dont* suppose it was over fourteen inches at the furtherest.

Q. When did you last see the sugar stump or tree?

A. The time I helped Danial cut the poplar.

Q. Was it standing then?

A. Yes sir.

Q. Did it stand north, or east or west of the big poplar?

A. To the best of my knowledge it stood kind of north.

Q. Was any one with you when you first saw this tree fourteen or fifteen years ago?

A. I *dont* think there was I *thaught* one of my brothers was with me but he said he *wasent* and I guess I was by myself.

Q. Are you acquainted with Mr. Baker who was on the stand a short time ago.

A. Yes sir.

Q. Did you ever have any talk with him about this tree?

A. No sir. I never.

Q. Are you related to him in any way?

A. No sir.

Q. Do you know John S. Dotson?

A. Yes sir.

Q. How long have you known him.

page 20.] A. I have known him ever since I was a boy.

Q. Did you ever hear any thing about the suit

between Mr. King and J. W. Watkins over the land where Dotson lives and which he claimed?

A. Yes sir. I have *herd pople* talking about it.

Q. Did you ever talk with him about or *here* of him talk about it?

A. Not that I recollect of at this time.

Q. Do you know Mr. Watkins?

A. Yes sir.

Q. Do you know A. W. Campbell or Mr. Ritter?

A. I reckon I *wouldent* know Mr. Campbell if I was to meet him, and as for Mr. Ritter I have no recollection of him,

Q. How long ago did you first hear about this King claim and suits concerning it effecting the lands on Knox Crek?

A. I *couldent* tell you how long *maby* eight or ten years or *maby* twelve years.

Q. You heard about the suits as they were going on from time to time *dident* you?

A. Of course I have heard people a talking about them.

Q. Did you ever talk with Mr. Dotson or Mr. Watkins about these trees?

A. Not that I have any recollection of.

Q. You never have been called on to testify before about them have you?

A. No sir I *havent*.

Q. On which side or sides of the sugar tree were these marks you speak of with reference to the other two trees were they towards them or away from them?

A. It was towards one of the poplars and the other one stood a little in below it like.

Q. Could you go and point out to me or any one I would send with you those stumps *thst* you say were marked?

A. Yes sir I could.

Q. Will you do so?

A. If it suited me I would if it *dident* I *wouldent*.

page 21.] C. W. Campbell attorney of his *cliants* object to the for going questions because they do not seek evidence.

RE-DIRECT EXAMINATION

Q. Was the top broken of the sugar tree when you first saw it some fourteen or fifteen years ago?

A. Yes sir.

Q. You spoke in *you* cross examination about the distance, the hacks on one side of the tree around to the hacks on the other by saying that they were half way around, did you mean that the hacks were half way around to the opposite side of the tree or that they were on the directly opposite side from the other half.

Objected to by M. F. Stiles, attorney as leading and suggestive.

Q. Please illustrate on the barrel now sitting before you?

A. They were not half way around not more than a third. Here witness illustrate to the commissioner on the *berrel* placed before him the position of the hacks on the tree. Showing the same to be about quarter ways around the tree from each side.

Q. Have you ever had any *experiance* in surveying, either as a surveyor, chainman, axman or marker?

A. Nothing outside of carrying a chain.

And furthere this deponent sayeth not.

his

MILES x LESTER.

mark.

Witness proves 1 one day attendance and 88. miles necessary travelled.

Witness mark of MILES LESTER,

J. T. GRAHAM, *Commissioner.*

page 22.] It is ordered that these proceedings be now adjourned until tomorrow morning at 8 o'clock.

JOHN T. GRAHAM,

Commissioner.

Thursday, May 8th 1902: Met at the place pursuant to adjournment on yesterday: Phesent the same parties as on yesterday.

LEVI LESTER a witness introduced in behalf of the same defendant after being first duly sworn upon oath testified as follows:

EXAMINED

By Mr. Campbell.

Q. State your age residence and occupation. Ans. Age 54 years, residence *Buchanan* County, Virginia; occupation farmer.

Q. Where do you live with reference to the present residence of Daniel Justice on the right fork of Race Fork. Ans. I live about two miles and a half of him on what we call the Pounding Mill branch of Knox Creek and he lives right across the hill on the right of me.

Q. How long have you liveed in that part of the country—that is on the waters of Knox Creek? Ans. About twenty-nine or thirty years.

Q. What was your fathers name and state if he is now living?

Ans. Mike Lester. No sir he is dead. He died about 15 years ago.

Q. State if you ever heard your father speak of finding certain marked timber trees near where Daniel Justice now lives, if so state when you heard him speak of it and what you heard him say he saw?

Ans. Objected to by M. F. Stiles, Attorney as incompetent.

Ans. Yes sir I heard him speak of it, it is from 26 to 28 years ago. He said he saw some large timber marked there that was corner trees it was in a year or two afteer I was married that it come around in a conversation he says "Levi I have been on the Race Fork and there are a piece of vacant land laying in to the right of where Daniel Justice lives and dont say nothing about it for I want to get me a warrant and entry on it for I have trailed the line and found it on the ridge of Trace Fork on a wild cherry

tree". Before the old man got to do anything with it there was a man by the name of Lonhart got the warrant and entry on it.

M. F. Stiles Attorney moves, to strike out the question and answer.

Q. Did Daniel Justice live there at that time. Ans. No sir.

Q. Was there any cleared or improved land there at that time? Ans. No sir.

Q. What line was your father trailing? Ans. He was trailing the line that we know by the Coleman Survey.

Q. Did your father speak of the number and kind of trees, if so what did he say? Objected to by M. F. Stiles attorney as hear-say.

Ans. He said there was a poplar and some more timber marked there.

Q. Did you understand from your father that these marked trees were the corner of the Coleman Survey?

Objected to by M. F. Stiles as incompetent. for being hear say.

Ans. No sir not for the Coleman Survey exactly but it was right at or near the Coleman line that he was on.

CROSS EXAMINED by M. F. Stiles attorney for H. C. King.

Q. Were you with your father at the time? Ans. No sir.

Q. Are you acquainted with Dan Justice and the place where he lives?

Ans. I ought to be he is my son-in-law.

Q. How long have you been acquainted with the locality where he lives?

Ans. I have been personally acquainted with it on and off for pretty near 30 years.

Q. How long has he lived there? Ans. From 4 to 5 years right along there in that bounds.

Q. Have you been at that place often from time to time since he lived there and before. Ans. Yes sir I have ranged
page 23.] my cattle in there and have been regular all the time because it is right in the bounds.

Q. Did I understand you to say that you had seen these trees that you speak of? Ans. No sir if you understood me to say that I *dident* say it. I never saw them.

Q. How was your attention called to this matter recently and by whom?

Ans. It was called to it by Daniel Justice.

Ques. When? Ans. About a year ago.

Ques. Can you tell about what month? Ans. Right about from the 1st. of July till along in August.

Ques. Did you know at whose instance you came to be called here as a witness? Ans. Yes sir I suppose I do. Mr. Campbell's and our peoples who are trying to hold our land and gain their just rights.

Que. To whom do you mean by the people you refer to? Ans. We mean all the people that is in this King Survey.

Que. Are you one of those people? Ans. I am one of those people sir.

Que. Has it been explained to you that to establish a corner of the King survey on the Race fork of Knox Creek would be a good thing for the people and a bad thing for King? Ans. No sir it has not.

Que. Is it your understanding that it would have that effect?

Ans. I *understud* this way if he has a little survey up there show him where his land lays. And if his corners run him out there there is no use for him to try and cover the whole country.

Que. King has had a number of suits going against people in that country *hasent* he? Ans. I dont know whether he has had a number of suits going or not.

Que. You know that he has sued a good many people in there?

Ans. Why there has been a good number of people sued in there.

Que. You are one of them? Ans. I am one of them. I am the second man the injunction was filed on.

Que. Do you know where Mr. King contends in what country his lines run what country they cover? Ans. No sir I do not.

Que. You know he has sued people claiming lands much further down Knox Creek than Dan Justice's dont you and on Paw paw Creek and clear to the State Line? Ans. Yes sir that is the report.

Que. You understand that if his corner is on Race Fork that it would only leave a little survey in *Buchanan* County? Ans. Yes sir if it is Established there. It wont establish very much.

Que. How did you arrive at that opinion, Do you know anything about the lines of the survey? Ans. Because I have been with the surveyors in a part of it, yes sir I have been with the surveyors in a part of the lines and know something about them.

Que. With what surveyors?

Ans. With Mr. Stone.

Que. Was the opinion that you formed that to establish a corner on Race Fork would cut the survey down to a small quantity derived from your own observation or from what you heard the surveyors and other say? Ans. If they haint got so much they wont contend for so much

Que. What other persons were along and with you and Mr. Stone?

Ans. Mr. Mose Charles and Mr. Reynolds and a man by the name of Montgomery he was not a surveyor.

Que. *Dident* you hear them discuss this question and discuss what effect it would have on the survey by locating the corner on Race Fork?

Ans. Never did sir.

Que. Who have you heard discuss it. Ans. Why the neighbors have been talking about it.

Que. What neighbors? Ans. The neighbors all generally at large.

Ques. Their opinion and conclusion was that it would be a good *think* to establish a corner there and cut King down to a fine point *wasent* it.

Anc. Yes sir if his lines takes in there, that was the conclusion.

page 24.] RE DIRECT EXAMINATION

Que. Do you own any land, and if so and on what creek are they located?

Ans. Yes sir and it is located on Pounding Mill branch of Knox Creek.

Que. Are they within the King lines, if the corner on Race Fork of Knox Creek be established? Ans. Yes sir it is right about middle ways of it.

Que. Establishing a corner on the Race Fork of *Knox* near Daniel Justice's house does not exclude your lands from the King Survey?

Ans. No sir it does not.

And further this deponent saith not.

his
Signed LEVI x LESTER
mark

Witness proves two days attendance
and 100 miles travel

M. F. Stiles, attorney for H. C. King here moves that all the questions and answers of the foregoing witness relative to statements made by his father be stricken out.

WAYNE JUSTICE, a witness introduced in behalf of the same defendants, after being first duly sworn, upon oath testified as follows.

Que. State your age, residence and occupation? Ans. Age 22 years, residence *Buchanan* County Virginia, and by occupation farmer.

Que. Do you know where Daniel Justice now lives on the Right Fork of the Race Fork of Knox Creek? Ans. Yes sir.

Que. Were you ever present at Daniel Justices at a working when they clearing the land near Daniel Justices house?

Ans. Yes sir.

Que. State the names of all the persons who were present at that working? Ans. Riley Lester, John Harrison Lester, William Anderson Lester and Daniel Justice is all that I remember.

Que. Was there any marked timber cut down there on that day?

Ans. Yes sir.

Que. Did you assist in cutting down any marked trees? Ans. Yes sir.

Que. What kind of tree was it and how was it marked? Ans. It was two poplar trees and a sugar tree. It was marked with three hacks on each side.

Que. On which side were they marked? Ans. As near as I can tell East and North.

Que. Were each one of the trees so marked? Ans. Yes sir.

Que. How many hacks did the trees have on each side?

Ans. Three hacks.

Que. What was the *appearence* of these hacks in respect to age?

Ans. They looked like they was very old.

Que. Which one did you help to cut down? Ans. The lower one.

Que. Did you notice near the lower poplar a large hole or *depresion* in the ground, having the appearance of where a tree had uprooted?

Ans. Yes sir I think I did.

Que. Was there any trunk of a tree still lying there at that time?

Ans. I dont remember now.

Que. What month was this chopping in? Ans. It was on the 25th. day of December?

Que. State as near as you can how many years ago? Ans. As nigh as I can tell it was four years the 25th. of last December.

Que. About how far these trees stand above Daniel Justices House?

Ans. As nigh as I can tell about 150 yards maybe 175 yards.

Que. What was the appearance of the sugar tree? Ans. It was a sugar tree snag.

page 25.] CROSS EXAMINATION by M. F. Stiles.

Que. How many trees were cut dowa altogether while you were working at this clearing and how much ground was cleared? Ans. I *couldent* tell how many trees were cut down there might have been about an acre of ground cleared I guess.

Que. Give your best judgment of the number of trees that were cut in the process of clearing that acre? Ans. I *couldent* do that I *dident* count them.

Que. Were there any besides the two poplars and sugar tree that you have mentioned? Ans. Yes sir there was timber cut down.

Que. What kind of trees? Ans. Beeches and sugar trees and maples. I don't remember of any oaks being cut there was one poplar cut that was the marked tree.

Que. Was there only one poplar tree cut that day? Ans. That is all that I have any recollection of.

Que. Were the marks on these trees very distinct could you see them plainly? Ans. No sir they were about growed up.

Que. Did they look about the same on all the trees? Ans. Yes sir.

Que. Just about as plain on one as on the other? Ans. Yes sir as near as I can tell.

Que. How did you happen to pay attention to these marks? Ans. Why there was some one made mention that they were corner trees.

Que. Did you notice at the time how they were marked as to the points of the compass? Ans. No sir I did not.

Que. Did you stop to think anything about that matter or pay any attention to it? Ans. As nigh as I could tell from the shape of the ground they were laying east and north.

Que. Did you particularly notice that fact at that time?

Ans. Yes sir.

Que. How did you happen to do that? Ans. Because the trees were corner trees or I thought *there* were.

Que. How large were they? Ans. They must have been between thirty-five and forty inches as night as I could tell.

Que. Both of them were that size? Ans. There was one a little smaller than the other.

Que. How large was the small one? I *couldent* tell *tate* I *dident* measure it.

Que. About how large? Ans. It must have been between thirty and thirty five inches.

Que. How did the three stand with reference to each other?

Ans. The poplars stood up on sorter sidling land one stood up here and the other down there and the sugar sorter between them.

Que. Did this line of trees lie east and west or north and south or what direction? Ans. I *couldent expalin* that, there was no *compas* there.

Que. You *couldent* tell the points of the compass at that place could you?

Ans. No sir I never saw one set *ther*.

Que. You couldent tell the direction of the points of the compass at that place at the time you were doing this chopping could you without a *compas?*

Ans. Why not exactly I *couldent*.

Que. Did the marks on the large poplar—the one up the hill face towards the sugar tree or away from it? Ans. As well as I recollect it was more towards the sugar tree.

Que. If you stood at the sugar tree could you see both the marks on the larger poplar? Ans. Yes sir.

Que. Did those marks face *towrds* the creek or up the hill?

Ans. They faced towards the little drain sorter *aus* sorter around across the point it seemed.

Que. How did the marks on the lower poplar face? Ans. Nigh as I could tell about the same way.

page 26.] Que. Did they face towards the sugar tree? Ans. One faced towards the sugar tree but the other was hardly in shape but was near it as nigh as I *caould* tell.

Que. If you stood at the sugar tree facing the small poplar would the other mark be toward your right or towards your left?

Ans. I *dident* stand there and try it.

Que. If you had stood there how would the marks have pointed?

Ans. It would have pointed to my right as near as I can recollect it.

Que. I understand you that these trees stood near a little drain?

Ans. Yes sir. They may have been about ten or fifteen yards or maybe not so far from it.

Que. Were they on the north or south or east or west side of the drain? Ans. They were on the east side of the drain as near as I can tell.

Que. Could you have *see* the marks from the drain? Ans. Yes I could have seen them if I had paid any attention to them.

Que. Was your attention in any way called to the hole you speak of in the ground near those trees while you were then there?

Ans. No sir my attention *werent* called to the hole I just saw it.

Que. Was the ground in that neighborhood smooth or rough?

Ans. It was just *tolerby* rough.

Que. How do you happen to remember such a simple thing as a hole in the ground on the side of the mountain? Ans. Just becausé it looked like there was a tree rooted up and I paid attention to it.

Que. Describe the character of the bark of these poplar trees, whether it was smooth or had heavy ross as they call it?

Ans. I *dident* pay enough attention to the bark to recollect how it was.

Que. You cant tell then whether the *course* bark was still on or whether it had fallen off or whether it ever had *course* bark?

Ans. No sir I never paid enough attention to it to recollect any thing about it.

Que. Have you been at the place where these trees were since they were cut?

Ans. Yes sir I have been there several times.

Que. When were you there last? Ans. About three months ago, it may not be that long.

Que. Are any of the stumps of those trees still there? Ans. I *dident* pay any attention whether they are there or not.

Que. Have you been at the stumps since the trees were cut down?

Ans. No sir I *havent* been right exactly where they were cut down but I have been close there.

Que. Could you find the stumps if they are there? Ans. Yes sir if they are there.

Que. Have you ever shown them to any one since the trees were cut?

Ans. No sir.

Que. Would you be willing to go and point them out to me or to some one I would send with you? Ans. It would be nothing to me to go and point them out.

Que. What do you mean by that you would be willing to do so?

Ans. No sir it is nothing to me.

Que. Have you ever seen these trees before the day they were cut?

Ans. No sir.

Que. How long *ahs* Daniel Justus been living at that place?

Ans. He has lived there five or six years I *done* know which.

Que. What part of Buchanan County do you live in? Ans. On Knox Creek on a branch they call Laurel that runs into Knox Creek.

Que. Have you a family or are you single? Ans. I have a family.

Que. Who is your father? Ans. Hiram Justus.

Que. Where does he live? Ans. On Laurel.

Que. When was the matter of these trees called to your attention of late *a* by whom? Ans. I dont whether they was call-

ed to *by* attention by anybody but some one asked me if I went there to that gathering and I told them I did.

Que. Who was it that asked you? Ans. I believe it was John B. Justus.

page 27.] Ques: Is he a relative of yours? Ans. No sir.

Que. How long have you known him? Ans. I was born and raised about a mile and a half of him.

Que. Did you ever tell him anything about these trees? Ans. No sir.

Que. Did you ever tell any one about them? Ans. Yes sir I told Sid Stone that surveyor about seeing them.

Que. You have heard about the King land suits over that land before this?

Ans. Yes sir I heard some one say something about it.

Que. Heard a good deal about it *havent* you? No sir I never heard much about it.

Que. You knew that there was a suit between Mr. King and people on Knox Creek? Ans. Yes sir I heard about it.

Que. Did you hear about it about the time it was brought?

Ans. Yes sir I heard there was a suit and that is *alll*.

Que. How did you happen to go to this working at Dan Justice's?

Ans. Because he was said to be my brother and he asked me.

Ques. How did you happen to come over here? Ans. Because they wanted me to come over here—they asked me if I was at that working and *and* asked me to come over to Williamson, John B. Justice asked me and Levi Lester asked me to come over.

Que. Have you had any talk at any time with your brother Dan about these trees since they were cut? Ans. No sir I dont think I have.

Que. *Wouldent* you know if you had? Ans. He might have named them to me when it was first done and I would have no recollection of it.

Que. Has he not talked to you about these trees and this matter since last July? Ans. If he did I dont remember it.

Que. And still you remember seeing the hole in the ground five or six years ago? Ans. Certainly I remember seeing it.

Que. When did you first hear, lately, that these trees were of any importance to any one and how did you find it out? Ans. Well I dont know that I have heard any one say that they were of any interest to any body.

Que. Did you ever have any talk with Moses Charles, Harve Charles?

Ans. No sir.

Que. Is this the first talk you ever had to any one about these trees since they were cut?

Ans. No I dont believe I ever talked to any one before coming here about them.

Que. Did you know of any one there last summer or fall hunting corner or marked trees? Ans. Yes I knowed there was some surveyors in there last fall.

And further this deponent saith not.

his
WAYNE X JUSTICE.
mark.

Witness proves two days and 104 miles travel.

page 28.] W. A. LESTER, a witness introduced by the same defendants after being first duly sworn, upon oath testified as follows:

EXAMINED

By John A. Sheppard, attorney.

Que. What is your age and where do you live? Ans. Age 19 years and live on Knox Creek.

Que. Are you married or single? Ans. Single.

Que. Who is your father. Ans. Levi Lester.

Que. Are you acquainted with Daniel Justus Ans. Yes sir.

Que. Do you know where he lives Ans. Yes sir.

Que. On what creek does he live. Ans. Race Fork Creek of Knox Creek.

Que. Do you know the small drain or branch that empties into the Race fork near the house of Daniel Justice? Ans. Yes sir.

Que. Have you ever seen any marked trees standing on that branch or drain near the house of *of* Daniel Justice? Ans. Yes sir I seed a beech *a beech* two poplars and a sugar tree I *dident* look at any marks on any but the beech and there was two hacks on the beech on the one side is all I remember seeing. On those other trees I *dident* see any at all on them for I *dident* go to look.

Que. *were* there other persons present *present* on that occasion?

Ans. Yes sir there was some four or five of them. There was me and Daniel Justice and Riley Lester and John Lester and Wayne Justice that is all that I remember now of being by.

Que. When did you see the trees and what were you all doing there?

Ans. It was four or five years ago I *wont* state for certain which. Were all gathered at a working that Daniel Justice had there on Christmas

Que. Were any of these trees cut on that occasion?

Ans. Yes sir the beech was cut when I left and the others said they cut the one poplar that evening.

Que. Who cut the beech? Ans. John Lester and Riley Lester.

Que. Was anything said at the time about cutting the other trees?

Question objected to by M. F. Stiles, attorney, as *as* hearsay calling for a declaration.

Ans. Yes sir when I left late that evening they were cavelling over cutting the poplar, they said they worked the next day. Que. What was Cavil? Ans. They were caviling over cutting those poplar trees or not Dan Justice said there were corner trees and he was afraid they would get him into trouble if he cut them.

Que. When did you next see the place where you saw the trees.

Ans. It might have been a month or not so long or a little longer.

Que. Were the trees gone when you next saw the place? Ans. Yes as well as I remember they were all gone.

Que. On which fork of Knox Creek does *daniel* Justice live?

Ans. On the right hand fork of the Race Fork of Knox Creek.

Que. On which side of the fork did the trees stand?

Ans. On the right hand side of the main fork. On the right hand going up

Que. On which side of the drain did the trees stand. Ans. *on* the upper side.

Que. What was the *appearence* of the marks on the beech as to age?

Ans. It looked like it was old. It was all healed over. Just the scar from the ax *ax ot* tomahawk was all that I could see. If it was marked with an ax it was a small ax.

Que. How far from the beech were the two poplars and sugar tree?

Ans. As well as I remember one of them was from five to ten steps and the other may have been ten or fifteen steps.

CROSS-EXAMINATION

page 29.] By Mr. Stiles.

Que. Did you ever see a tomahawk? Ans. Yes sir I have seen what was said to be a tomahawk.

Que. How near to the poplars and sugar trees did you go? Ans. I *wont* say for certain maybe I was all around all of them as we were working a right smart bit.

Que. Well were you right close by them? Ans. I might have been right up at them but I *wont* say as we were working around there for right smart bit.

Que. About how much ground was cleared or how much were you working on that day? Ans. From a quarter to a half *acres* I guess we were cutting it down and rolling it off into the swag.

Que. The only marks you saw were on the beech? Ans. Yes sir.

Que. How did the beech stand with reference to the creek and drain—how far from each. Ans. As well as I can guess at is it is from 170 to 180 yards from the creek—the beech is and *mayby* ten steps more or less from the drain the beech is.

Que. How were the marks on the beech with reference to the drain?

Ans. The marks were turned kind of down and across the drain like towards east as near as I could tell.

Q. Did they face the other trees? Ans. I *wont* say for certain whether they faced the other trees or not I was not paying particular attention

Que. Did you examine those marks with any care? Ans. Nothing only Dan Justice made a remark that a bear had climbed that tree and we went up to the tree as I wanted to see it as I was young and we got to examining the tree and found those hacks.

Que. They might have been made by a bears claws *couldent* they?

Ans. I dont know, it looked unreasonable if a bear had such claws as that I would like to see one that could make such hacks as that.

Que. Have you been at that place lately? Ans. About there five or six weeks ago I was there I went through the field but dont remember how close I was to them.

Que. Were you there some time last August or September when some surveyors and other persons including Reece Davis were there?

Ans. Yes sir I was there in August it might have been September—think it was August. Reece Davis and Mr. Sheppard and Mr. Campbell and Mr. Gaujot were there, and Mr. Harve Charles.

Que. *Dident* you say at that time that you *dident* know anything about any corners—that the only marks of any kind that you had seen were on the beech and they looked as if a bear had climbed it?

Ans. No sir I dont think I had any such talk as *thit* if I did I dont remember it.

Que. *Havent* you said to any one about that time or since then that you dident know anything about any marked trees that all you had seen was some old bear scratches?

The question objected to and ask that counsel fix time and place and give the name of the person, to whom such statement is claimed to have been made.

Here Mr. Stiles fixes the person as J. N. W. Blankenship and the time is *withing* two or three months on Knox Creek.

Ans. No sir I did not.

Que. Are you related to either of the other Lesters who have testified

Ans. Yes sir my father is here and two of my brothers are here

RE-EXAMINED

By Mr. Shepperd.

Que. Has Watkins Blankenship mentioned above as J. N. W. Blankenship seen you within the last two or three months and talked to you about what he would testify in this case

Objected to as immaterial.

Ans. *Wentime* last winter he came to me at Hurley in Hurleys store and *taken* me off in the office and wanted to know what I would state and claimed it would be a great benefit
page 30.] to him these people had his land and he was trying to, get a new hearing on it, Kings people had his land. He claimed those corners were a great advantage to him if they could be established. I dont remember of any thing further that was passed that amounted to any thing.

Que. Did any *toher* person approach you and ask you what you would swear about corner trees if so state who it was and *wah!* was said?

Objected to as not re-examination and not related to the question propounded by counsel.

Ans. Yes sir Daniel Justice come to me about two weeks ago and me and him was talking *aroung* a while and he wanted me to go home with him. I had been to work that day and told him I was tired and *couldent* go that night, and then he said he wanted to talk with me and I told him all right. He ask me what I would have to say about that and then he says "This here was all fixed up last

summer for us to just tell this tale and not to state it at all." I says Daniel "This is not the way I was called on to state this tale I was called on to state the truth". Then he said you can get $25.00 and a clear receipt against your land to state there were no corners there. I said to him Daniel you know there were corners there *you know the beech was* there and I left you all *cavelling* over whether to cut them or not. He said then, as well as I remember, "I made them hacks myself" I told him "Daniel of course you might of made them but I have got to state what I know about those corners". Then he said "You are the only one of them that has any mind" *Or* something that way. And then he said "There is plenty of money in this and it will just come by handsfulls if you will go my way". I said I cant afford to *to* that and he said just go ahead then in your way bull headed and I will never name it to you any more". I said all right then that is all I can do and we parted.

Que. Had Daniel Justice been away from Knox Creek shortly before that conversation?

Ans. Yes sir he said he had been away said he had been down to Matewan. *as* I understood him. He said he had got back just a day or two before that. Then other told me that they *seed* him going and that he said he was going down to see Dr. Burgess.

Que. Did he tell you who he saw while he was away or where the money was coming from? Ans. I dont remember that he told me who he seen while he was gone or who the money was coming from, if he did I have forgotten.

Objected to by Mr. Stiles.

Que. Are you one of the persons on Knox Creek who in the month of August last year told C. W. Campbell Claud *Goukoi* me and others what you knew about the corner trees near Daniel Justice's house?

Ans. Yes sir.

Here M. F. Stiles attorney for H. C. King moves to strike out all the testimony of the witness as to statements by others to him or by him to others except his answer to question by said Stiles

with reference to statements made by him. And all statements made by others in his presence regarding any trees on Race Fork.

In response *tcounsel* for defentands states that they will in due time connect the defendant King and his representative with the conversations of Daniel Justice with this witness had after Justice had been away from and returned to Knox Creek.

And further this deponeth saith not

(signed) W. A. LESTER.

Witness proves 2 days attendance and
100 miles travel.

page 31.] RILEY LESTER, a witness introduced in behalf of the same defendants, after being first duly sworn, upon oath testified as follows.

EXAMINED

By Mr. Sheppard.

Que. What is your age and where do you live? Ans. Age 24 *yeers* and live in Virginia in Buchanan County, on Knox Creek on the Race Fork.

Que. How long have you lived in that neighborhood? Ans. I was born and raised there.

Que. Who is your father? Ans. Levi Lester.

Que. Are you acquainted with Daniel Justice and place where he lives?

Ans. Yes sir.

Que. Is he related to you in any way? Ans. Yes sir we are brother-in-laws.

Que. Do you know of a small drain or branch that comes into the right fork of the Race Fork of Knox Creek, at or near the house of Daniel Justice?

Ans. Yes sir.

Que. Did you ever see any marked trees on that drain near the house of Daniel Justice? Ans. Yes sir I saw two poplars and a beech.

Que. How were they marked? Ans. The poplars were marked as corners and the beech as a line tree.

Que. In what direction did the mark on the two poplars face?

Ans. North and east.

Que. How many marks were on each *on* of the poplars? Ans. There was six on each one—three on a side.

Que. In what directions did marks face with reference to the right fork of the Race Fork and the small drain? Ans. The east line was marked towards the Race Fork and the north line was marked towards that little drain.

Que. What was the *appearence* of these marks as to age? Ans. Old ones.

Que. Did they seem to have been made with a large or small instrument?

Ans. Small instrument.

Que. Did you see a sugar tree snag or stump near the poplar?

Ans. Yes sir. There was a sugar tree snag there about twelve or fifteen feet high between the two poplars.

Que. Did you examine the sugar tree snag for marks or was it examined when you were there? Ans. No it *wernt*.

Que. How was the beech marked? Ans. It was marked on the east line.

Que. How many were on the beech *were on the beecd* and in what direction did they face? Ans. Two on each side they faced the poplar and the branch—the Race Fork I mean the main branch.

Que. What was the *appearence* of those marks as to age? Ans. Old.

Que. How did you come to see those trees and who, if any one was present?

Ans. Daniel Justice had a chopping and myself and J. H. Lester, W. A. Lester and Wayne Justice and Daniel Justice was present at that time.

Que. Do you remember seeing another down poplar or anything on the ground that would indicate that a tree had up-rooted near the other poplars and sugar tree? Ans. Yes sir there had been an old tree had rooted up there.

Que. Did you see any remains of the up-rooted tree there?

Ans. I dont recollect at this time.

Que. Did you help to cut any of those corner trees or the line tree?

Ans. Yes sir I helped to cut the line tree and one of the poplars.

Que. Which poplar did you help cut? Ans. The lower one.

Que. Have you pointed out the stumps to those trees to any one within the last year, if so to whom? Ans. Yes sir, to Mr. Stone and Mr. Reymo.

Que. What, if anything *wus* said about those trees and the marks on them by the persons who were present when they were cut?

Objected to by King as incompetent a calling for hearsay testimony.

page 32.] Ans. Daniel Justice made mention and said that he *dident* know whether to have them cut or not and he went on a little while and said that he would have them cut but to not tell nobody about it for fear that they would handle him with the law for cutting corner trees.

Que. Are you one of the persons living on Knox Creek who in the Summer of last year told C. W. Campbell, Claud Goujot me and others what you knew about those corner trees? Ans. Yes sir.

Que. Have you since that time been approached by any person who tried to get you to make a different statement about those corner trees, if so state who it was, when and where it took place and all that was said and done?

Objected to by defendant King as immaterial and calling for hear say testimony.

Ans. Yes sir. Daniel Justice come to my house one night after I had laid down and went to sleep and waked me up and be *begin* to talk about the survey them lines and I told him that they was a wanting him—that is Sid Stone and Reynolds, about following the lines. He said by God there was two or three a wanting nim. I told him I *dident* know. He said that was *sorter* like

a surveying that they done last summer. That the old man Mathews set in the camps and told Sid Stone how many degrees to vary. He said by God there was nothing in no such. We sat around there till he got his supper and he said for us to go out from my wife and take a talk. I told him all right and went out in the yard and sat down and he said there was a whole lot of money in this thing for us and I says Daniel I wouldent swear that them corners *wasent* there for ten thousand dollars. I says Reece Davis come here the other day and when we was setting out in the yard and raised up a talk about the corner and said that some man could get two hundred dollars from Mr. Wilder to swear that them corners *wasent* there. I told him I wouldent swear it for ten thousand dollars. And then he put into talking that the corners never was there. I told him I was bound to swear that they was there. He said there never was none there only what he made himself. I told him didnt *know* whether he made them his self or not that they was old looking corners and he said that it was fixed up with him and Mr. Goujot, Mr. Campbell, Harve Charles and John Sheppard to locate them corners, to throw Mr. Wilder out. I told him I *dident* know what was fixed up with them that it *went* no fix up with me. He said that he forgot to name it to me. I said Daniel *dident* Mr. Campbell tell me sitting right on your porch to tell him nothing only what I could swear. He said well they was just talking then. I ask him if he *dident* take me off *fom* home one morning to go down on the creek with him and after he got me off down on the creek a piece he raised up in talk about these corner trees. I was afraid to tell him anything at the first start for fear that he wanted something for Mr. Wilder and that he went on and explained that it was the peoples lawyers and they wanted nothing but the facts. And I *ask* him if it was a made up plan why *dident* he tell me that it was and he said he thought he would tell me hereafter and I told him it *werent* no made up thing with me that I told them lawyers just what I would have to swear about it and he said if I *couldent* do nothing else that Mr Campbell, Mr. Goujot and Mr. Sheppard would come around and *ax* me anything to tell them that I was a talking then

that I would have to swear now; that I had told the country what I had to swear and I *couldent* go back on my word. That is all that I recollect at this time that was said.

Que. Where had Daniel Justice been the night he came to your house after you had gone to bed?

Ans. He went off and said he was going to the doctor and when he come back I asked him if he had been to the doctor and he said yes he had been to the doctor and to see other parties. He said he had been off to see other parties about those corners being cut as they was liable to penitentiary him for it.

page 33.} Que. Did you afterwards learn where Daniel had been? Ans. No, sir I *dident* ask him.

Que. Do you know Watkins Blankenship? Ans. Yes sir.

Que. Have you been approached recently by him in relation to corner trees if so state what he said?

Objected to by defendant King.

Ans. He come to my house three weeks or a month ago and raised it up in a talk about the corner trees and said if that if he *dident* believe when he come to the facts that they would ever prove that them corner trees was marked. I told him that they would prove that they were marked that I would swear to them myself. He said well by Georgie *If* I a *knowed* that *if* would a let my land out and he never said any more about it then.

Que. Has he approached you since that time and *is* so what did he say to you? Ans. He come and called me out of the field where I was at work and asked me if Daniel Justice had fixed with me to make any affidavit I asked him what about. He raised up his eyes and said you know what about. He says about that there business that they had been a working at. And I said to him that if it was about them corners that Daniel talked to me about and *seed* it *wernt* no use and he went on to say that he had a right to swear any body and that Daniel would have to pay him for his day a coming over there; that he got him to come

over, that is about all that I recollect that he said about the corners.

CROSS EXAMINED by Mr. Stiles attorney for defendant King.

Que. Did you ever have any conversation or communication with Mr. Wilder about these trees or any other subject? Ans. No sir.

Que. How did you happen to be present when the parties were present that you speak of at Dan Justices last summer or fall, who sent for you?

Ans. Mr. Sheppard and Campbell sent for me by Dan Justice. The first conversation that I had was with these gentlemen (Campbell and Shepard) down on the creek below Dan Justice's and they told me to meet them at Dans the next day, at these trees.

Q. When you cut those trees did you pay especial attention how they were marked and in what direction? Ans. Yes sir.

Que. Did you ever set up a *compas* or see one set up at those trees or at the stumps or in the neighborhood? Ans. I have saw them set up in the country but I never looked at them.

Que. You saw or heard it pointed out at that time which was north and which was *sounth* at that place, did you? Ans. I never saw the *compas* set up where the *tree* are.

Que. How could you tell which was east or which was west when you cut those trees? Ans. Because I was always raised up by the Sun to watch the Sun.

Que. A man that is raised in the country can tell the points of the *compas* by the sun? Ans. I can tell what I was raised to and I have heard surveyors say which is north and *each*.

Que. What direction was the large poplar from the small one?

Ans. It was north more so north than east.

Que. What direction was the large poplar from the sugar snag?

Ans. It was more betwixt north and east. I don't know that I paid that particular attention to say whether it was more north than east or not it stood between the two poplars.

Que. How did the marks on the large poplar face with reference to the shall poplar? Ans. I *couldent* tell you which one of the poplars was the biggest as I never measured them I *realy* thought the lower poplar the biggest.

page 34.] Que. How did the marks on the lower poplar face with reference to the upper poplar? Ans. The lower poplar was marked on the lower side and so was the upper poplar and I don't see that the marks faced at all.

Que. What direction did the marks on the poplars point with reference to the beech, towards it or away from it? Ans. Towards it.

Que. Do you remember in what year these trees were cut? Ans. They was cut in 1897 or 1898 one I won't be positive which year.

Que. When were you last on the ground at that place? Ans. About two weeks ago or a little over it.

Que. Are the stumps there yet? Ans. Yes sir all except the sugar snag.

Que. How far do you live from Dan Justices? Ans. I guess it is about one mile and half.

Que. Do you know Moses Charles and John B. Justice? Ans. Yes sir.

Que. Do you know John S. Dotson and John N. Watkins or Steve Baldwin?

Ans. I know all except Watkins and I have saw him a few *time* but never had much conversation with him I have traded with him in his store.

Que. You are a son of Levi Lester? Ans. Yes sir.

Que. You are pretty well *acquianted* with the people of Knox Creek the people I have mentioned and others? Ans. Yes sir *On* Knox Creek I am, except the old man Watkins.

Que. How long have you known these people? Ans. Ever since I have been big enough to know or recollect any body.

Que. You have heard considerable about the suit by Mr. King in the United *State* Court at Adington and elsewhere? against the people of Knox Creek? Ans. Yes sir.

Que. To whom did you first speak of these trees after you first saw them?

Ans. Dan Justice.

Que. When? Ans. When he come to get me to go down on the creek with him to where Mr. Shepard and Campbell was.

Que. You had not spoken to, any one else before that? Ans. No sir not to my recollection.

Que. Are you willing to go, with me and point out the stumps you speak of? Ans. If you will go your self and not try to take any snap I will go with you.

And further this deponent saith not.

(Signed) RILEY LESTER.

Witness proves 2 days attendance and
82 miles travel.

J. H. LESTER, a witness introduced by the same defendants after being first sworn upon oath testified as follows.

EXAMINED
by Mr. Shepard.

Que. How old are you and where do you live? Ans. Age 20 years and live Buchanan County, Virginia, on Knox Creek, on the branch called Pounding Mill Creek.

Que. Do you know Daniel Justice and where he lives on the right fork of the Race Fork of Knox Creek? Ans. Yes sir.

Que. Is he related to you in any way? Ans. Yes sir he married my sister and my Aunt too.

Que. *Dou* you know the small drain that empties into the right fork of Race near the house of Dan Justice? Ans. Yes sir.

Que. Have you ever seen any marked trees on that little drain near the house of Justice, if so how many and what kind?

page 35.] Ans. Yes sir I have seen a beech marked with a side line. I seed a poplar marked as a corner tree—

three hacks on the east and north side of it as near as I could tell.

Que. Was there any other timber standing near the poplar? Ans. Yes sir.

Que. State the number and kind of the other trees?

Ans. They said there was a sugar and a poplar marked. I never seen them. I could see them by looking but *didcnt* look at the present time. Que. Do you mean that you did not see the trees or that you did not see the marks on the trees? Ans. I did not see the marks on the trees.

Ans. I did not see the marks on the trees.

Que. Did you see the other poplar and sugar tree standing there?

Ans. Well sir I suppose I seen them but I don't have any recollections right at the present time.

Que. How did you come to see the marks on the poplar and beech?

Ans. Well sir we was all there one day together working—helping Dan Justice to cut and clear a piece of ground. He went up to a beech tree and made mention that there had been a bear *clamb* in time. I went up and looked at the tree and saw the marks on the tree and on that day or the next day one we cut the tree down. The same day or the next day one we cut the poplar down.

Que. How many marks were on the beech? Ans. Two as well as I remember.

Que. On which side of the beech were they? Ans. On the east side.

Que. Which way did the marks face with reference to the right fork of Race? Ans. Nearly straight down the hill to the creek.

Que. How did the marks on the poplar face with reference to the right fork of Race and the small drain? Ans. The marks on the east side faced towards the Race fork and the marks on the north side faced kind of *acros* the drain.

Que. How many marks were on the poplar next to the right fork of Race and how many next to the drain? Ans. Three.

Que. Do you mean there were three facing each way? Ans. Yes sir.

Que. What were the *appearence* of the marks on the poplar and beech with reference to age? Ans. They were very old looking.

Que. Are you one of the persons who in August of last year told C. W. Campbell and me what you knew about those corner trees?

Ans. Yes sir.

Que. Have you been approached recently by any one who tried to get you to make a *diferent* statement about those corner trees, if so who was it and what was said?

Objected to by defendant King.

Ans. It was not approached about making any *diferent* statement but I have been talked to about making a statement. Daniel Justice talked to me I were there at his house the night he came back. I went there to show Mr. Reynolds and Mr. Stone about them stumps and he come to me and told me that we had to be sworn on this and that the corners never was there. He said he made them. I told him I would have to state to what I seen. He said he knowed we all had to die and he *wouldent* try to lead me into nothing wrong. I told him to the best of my *knowledged* I would have to state they were old marked trees. That is about all that I recollect he said.

Que. Who was present when that conversation took place *betewween* you and Dan and what if anything took place between them?

Ans. There were no body present when he first commenced talking. We was off to ourselves *taking* and after we talked a few minutes he called his wife to us and told her about the matter and she told him that she would have to state if ever she was called on to that beech tree that was marked. She said you know it looked old. He told her *thqt* he made the corners all but the beech. He never made it. That is about all that I know.

Que. Did she say anything to him in reply, if so repeat it if you can?

Ans. She told him she *dident* know whether he made them or not the beech *look* like an old mark she never seen the rest.

CROSS EXAMINATION

page 26.] By Mr. Stiles

Que. Have you much experience in examining marked trees and examining corner marks? Ans. Well sir I know a corner or a line tree when I see it.

Que. *Dont* you know the commonest thing in the world is to see trees with three hacks on them and that you will find them in this country all over the creeks? and roads and trails? Ans. Well sir there could be some tree marked in that shape but I *dont* see why it would be. That there would be that many trees in one place all marked together without there being some purpose for them to be marked.

Que. You saw only one poplar and one beech with marks of any kind?

Ans. Yes sir.

Que. You *dident* notice any other trees particularly in that neighborhood

Ans. No sir. I *dident*. I never looked at the present time. I *wernt* thinking about such a thing as this occuring with the trees. If I had I would have looked at them all.

Que. Was the ground cleared at the time or was it in woods and brush?

Ans. It were in woods until we went to work.

Que. There were a great many trees of various kinds trees all around there were there not? Ans. Yes sir. it was about like any other woodland

Que. Timber standing clear down to the creek? Ans. Yes sir it was.

Que. Could you be able to tell the *diference* between a mark

twenty years old and one forty or fifty years old from their *appearence*

Ans. Well sir I never examined a thing like but I suppose a man could

Que., I mean could you? Ans. Yes sir I believe I could.

Ans. Yes sir I believe I could.

Que. Have you ever examined any marks of which you knew the age?

Ans. No sir.

Que. Could you see these marks on the poplar plainly? Ans. Yes sir, you could see them plain enough to tell they was marks all right

Que. About how long were they in inches? Ans. I never measured them but to the best of my knowledge *there* were about three inches long and maybe a little longer.

Que. About how wide? Ans. *The* were some five or six inches apart.

Que. What I mean was the width of each mark? Ans. It was some inch and *and* half or maybe two inches.

Que. How was it on the beech? Ans. They *werent* hardly so big as the beech is so much slower *groth* than the poplar.

Que. Does a poplar grow in length after it gets to be twelve or fifteen inches in diameter, does it get to be much taller *that* that ?

Ans. Yes sir I suppose it does it is *owning* pretty much to the growth of the poplar.

Que. Is it not a fact that poplar trees of say 18 inches in *diamater* are just about the same height as poplars of 10 inches?

Ans. No sir there are some little swamp poplars that grows along old fields that will grow swifter than the poplars that grows in rich hollows. But I suppose that a tree that as long as it stays green will grow both in size and in heighth.

Que. How near were you to the poplar when you noticed the marks?

Ans. I was right close to it. I was close enough that I helped cut the tree down. I might have had my hands on the tree.

Que. About what was its *diamater?* Ans. It was three feet or upwards. I *dident* measure it but it is what I call a pretty large tree.

Que. Did you take the trouble at the time to note the direction in which the marks pointed? Ans. No sir I *dident* have any *compas* set there to take a point from I just went from the best of my view and knowledge.

page 37.]

Que. Did you at that time take the trouble or take *suficient* interest to notice and ascertain upon which side the tree was marked, whether east or west and fix it in your memory? Ans. I *dident* take any note at the time but to the best of my knowledge it was marked east and north. I went back and looked at the timber since—the stumps I mean and looked at the way I cut them. To the best of my knowledge I cut the marks right out of the poplar on the east side. Que. When you cut into the tree did you find the marks inside?

Ans. I *dont* remember at this time whether I paid any *atention* or not. I know they were marked plain on the outside of the tree

Que. Did you pay any attention at that time to notice whether the marks were on one side of the tree or the other. Ans. The marks were on the east side and on the north about one third of the way around I *cant* state that I brought anything of that kind to my knowledge at that time but to the best of my knowledge they were marked as I have stated it.

Que. You say that you told Mr. Shepard and Mr. Campbell about these trees were you at the stumps at the time—the first time you talked to them about it? Ans. No Sir I was not at the *stupms* when I talked with Mr. Shepard and Mr. Campbell—I was at home when I talked with them.

Que. Did you see at that time any map or drawing of the country or surveys? Ans. No sir.

Que. Have you since seen any map? Ans. No sir.

Que. Or any blue print or drawing or sketch of the creek? Ans. No sir I *havent*.

Que. *WWhen* were these trees cut down? Ans. It was on the 25th. or 26 of December in either 1896 or 1897 I *wont* state for certain which.

Que. About how high above the ground were the marks on the beech?

Ans. They were about three and a half *ot* four feet high?

Que. Do you remember when you first spoke to any one about these trees after cutting them? Ans. No sir I *dont* know as I ever spoke to any one., till Daniel Justice come to me where I was laying on the bed This was a long in last August. He come and asked me if I remembered them I *dont* know that I told any person else until he come and named it to me about nine or ten *oclock* in the night.

Que. Are you a son of Levi Lester? Ans. Yes sir I pass for it.

Que. You have heard a good deal about the King law suit over in that country *havent* you? Ans. Yes sir.

Que. You know most of the people who are interested in them as defendants *dont* you? Ans. No sir I *dont* know the most of the people they are over such a big *boundry* that I *havent* been over it.

Que. Do you know John B. Justice, Moses Charles, Dotson S. A. D. Baldwin? Ans. Yes sir.

Que. How long have you known them? Ans. I have known John B. Justice and *moses* Charles ever since I was a boy and the other six or seven years

Que. Do you know Eli Hurlet? Ans. Yes sir I know his face when I see him I *havent* known him so very long—perhaps two or three years.

Que. You have known H. G. Charles for some time? Ans. I have known Harve Charles ever since I was a boy.

And further this deponent saith not.

his

J. H. x LESTER.

mark.

witness proves 2 days and 100 miles travel

page 38.] It is ordered that these proceedings be now adjourned until tomorrow morning, at the same place and between the same hours.

J. T. GRAHAM.

Friday, May 9th. 1902, met the place and at the hours mentioned pursuant to adjournment on yesterday: Present same parties as on yesterday

For convenience in these proceedings all defendants other than the defendant Henry C. King, represented by attorneys Campbell, Holt & Duncan, Sheppard and Goodykoontz and Edward C. Lyon and John B. Wilkinson shall be designated and referred to in the proceedings as "Contesting Defendants"/

G. S. STONE, a witness introduced on behalf of the same—contesting defendants, after being first duly sworn, upon oath testified as follows:

EXAMINED

By Mr. Campbell.

Que. State your age residence and occupation? Ans. Age 36 years, residence Logan, West Virginia, occupation, surveyor of land.

Que. How many years experience have you had as land surveyor?

Ans. Ten years.

Que. How much of that time has been devoted to actual field work and in what county? Ans. All of the time I have been at field work—most all of the time, in Logan County, Mingo County, Wyoming County and *Buchanan* County Virginia.

Que. What is the extent of your *experiance* in retracing previous surveys in those counties or any of them? Ans. I have been doing that kind of work all the time.

Que. What large surveys in those counties, or any of them, have you re-traced or attempted to re-trace on the ground? Ans. I *havent* made a complete survey of any of the large surveys,

but have retraced lines of the John Green thirty thousand acre survey and the John Green eighty-four thousand acre survey and the Robert Morris four hundred and eighty thousand acre survey and the Robert Morris five hundred thousand acre survey.

Que. Did you ever hold any official position, if so what and for *ahat* length of time? Ans. I have been county surveyor of Logan county for about six years. I *sill* hold the position.

Que. What was the first surveying you done on the Robert Morris five hundred thousand acre survey, in controversy in this cause?

Ans. If I am not mistaken it was in 1896.

Que. What lines of said survey did you run at that time?

Ans. I traced the line from what is *Known* as the "Muzzle Corner" to Guyandotte River.

Que. What timber, if any did you find, at what is called the Muzzle Corner

Ans. I found a standing poplar, and a poplar stump., 2 chestnuts both down.

Que. Did you block the standing poplar, if so, what did you find?

Ans. I blocked the tree and found on the south side I found the tree marked of which the annulations counted according to my present recollection one hundred and one years. I will produce the block in which the annulations can be counted.

Que. Who was with you at the time you did the surveying of that line and at the time you did the blocking of that tree?

Ans. Captain T. J. Mathews, L. C. White and one Mr. Rife, was with me when I blocked the tree. L. C. White went with me over the line.

Que. What was the *diamater* of the poplar you blocked and state whether it was marked on any other side except the *South* side?

Ans. The *diamater* was about twenty four inches, I dont believe it was marked on any other side.

Que. What was the *diamater* of the poplar stump and the down chestnuts?

page 39.] Ans. The poplar stump was about thirty inches, one of the chestnut stumps which had been blocked seemed to be about thirty six inches, the other was decayed and I could not state as to it.

Que. Have you recently done any surveying on the Robert Morris five hundred thousand acre survey? Ans. I have.

Que. Did you make a map showing the work done by you? Ans. I did.

Que. Please file the map made by you with the Commissioner and *I dentify* it with your name.

Ans. I here file the map referred to which I will *identify* with my name.

Que. Point out on the map the lines that you have recently run for lines of the said five hundred thousand acre survey, which we will hereafter call the "King Survey" for short?

Ans. I have run the line from "P" to "S" and from "S" to "ZZ."

Que. "P" is intended to designate what corner of the survey?

Ans. Four white oaks the second corner of said survey.

Que. Was any timber called for in the survey found at the south-east corner designated by P? Ans. There was not.

Que. What creeks, if any did you meander and lay down on the map?

Ans. I meandered Knox Creek from the mouth of paw paw fork to P on the map, I meandered Race Fork as shown on the map and Lester fork as shown and Guess's fork to and up Pumpkin Fork and Long Branch and Ben Creek; I had previously meandered Turkey Creek and Gilberts Creek.

Que. Have you correctly laid down on the map the creeks you so meandered? Ans. I have with the exception of Turkey Creek and Gilbert Creek which I found to be the same as shown in the map used in the H. C. King case as made by W. D. Sell.

Que. What map did you use in making the one you have filed

on which you lay down the work done by you? Ans. I used a map made by W. D. Sell and copied by J. K. Anderson.

Que. Were you at the residence of Daniel Justice on the right fork of the Race Fork of Knox Creek and were you shown two poplar stumps and a point where it was said that a sugar tree formerly stood?

Ans. I was.

Que. How is that point where the stumps stood designated on the map?

Ans. By the letter S."

Que. Who pointed out those stumps to you. Ans. Daniel Justice. Daniel Justice pointed them out to me at the time I made the survey since that time they have been pointed out to me by John Lester, and Riley Lester.

Que. What is the bearing of the line from P to S.

Ans. North 79° 20' West.

Que. What is the distance of that line? Ans. It is 2360 poles

Que. How is that line now properly described?

Ans. It is described by the red shaded line from P to S crossing Knox Creek Blackie Fork and Lester Fork and Two forks of Race Fork.

Que. What is *to* topography of the country traversed by that line

Ans. After crossing Knox Creek it would run over very rough ground across high hills and very high points, it would cross Blackies Fork and a small branch called Sugar Tree; then it would cross a *divideng* ridge between Knox Creek and Lester Fork and run along the side of White Oak branch of Lester fork, cross the right fork of Lester Fork—the fork ridge of said fork and the right fork of said fork and the dividing ridge between Lester Fork and Race Fork crossing said ridge about 300 feet to the right of a gap in the ridge leading to Race Fork, crossing the left fork of Race Fork crossing the spur ridge of said fork and the right fork of said fork to two poplar stumps and the point shown me by Dan Justice as being where a sugar tree

stood on the west side of a small branch of the Race Fork of Knox Creek.

page 40.] Que. Does this line cross or pass along the spurs of any ridge?

Ans. It does.

Que. Did you take the distance these two poplar stumps at S on the map stand from the right fork of Race Fork and from each other?

Ans. I did. They were 30 poles and 15 links from the creek; the two poplar stumps were three poles and 9 links apart; the point shown me where the sugar had stood was 2 poles from one of the stumps and one pole and 9 links from the other. They stood 100 feet west of a small drain.

Que. Where was the point of the sugar tree with reference to a line between the two poplar stumps? Ans. It was about eight feet south of a line between the two poplar stumps.

Que. Did you dig down at the point of the sugar tree and if so what did you find? Ans. I dug down about eight inches as shown me by Dan Justice and found roots which I took to be sugar tree roots.

Que. Did you measure the *diamater* of the two poplar stumps, if so give the measurements? Ans. The trees measured 36 inches across the stumps.

Que. Did you notice near the lower poplar stump any indications of an up-rooted tree, if so describe them? Ans. I did not.

Que. Can you take the lower stump and give the bearing of the other poplar stump and the point of the sugar tree?

Ans. From the lower poplar stump which I will designate as No. 1—it is south 54° West 2 poles to the point shown me as where the sugar tree stood; from poplar stump No. 1 to poplar stump No. 2 it is south 72° west 3 poles and 9 links.

Que. Did you notice near any of the points a *depresion* in the ground like if where a tree had uprooted, if so state where such depression was? Ans. At the point where the sugar tree stood as shown me by Dan Justice there was a place looked as though there had been a tree uprooted there.

Que. What was the character of the ground where these trees were said to have stood? Ans. It was about 100 feet left of a small branch the slope of the ground was about 15 degrees and had been cleared.

Que. How long in your opinion had the poplars been cut and the land cleared?

Ans. Looked as though it had been cleared about six or seven years.

Que. What is the variation of the needle of the *compas* from 1794 down to the time you run these lines? Ans. I would allow about five degrees.

Que. If a line in 1794. Read West how would it read in 1901 if you allowed the variation of five degrees? Ans. It would read North 85° West.

Que. How many degrees between north 85° west and the line you ran from P to S.

Ans. Five degrees and 40".

Que. What, if anything, did you find on the line from P to S. in the form of a line tree? Ans. About three quarters of a mile west of point P on the map and on the west bank of Knox Creek I found a poplar that was about three feet in *diamater* that was marked on the east and west side—two hacks on each side.

Que. What do two hacks found on a tree along a line indicate?

Ans. They indicate the line of a survey.

Que. Where with reference to the approach and departure of this line to and from that tree were these marks? Ans. They were the same as the line—the same bearing as the line.

Que. Do you mean the same bearing as a line you ran between P and S.

Ans. I do.

Que. How close did the poplar stand to the line? Ans. 104 and five tenths feet on the south side of the line.

Que. Did this poplar tree so marked stand near where your

line crossed Knox Creek? Ans. It stood about 100 feet west of the point where I crossed Knox Creek.

page 41.] Que. How close to Knox Creek did the poplar stand?

Ans. About ten feet from the bank of the creek.

Que. What was the *appearence* of the marks on this poplar in respect to age and the size of the instrument with which they were made?

Ans. They seemed to be very old and were about two inches long.

Que. How did they compare in *appearence* as to age and size with the marks you found on the poplar at the Muzzle or beginning corner of this survey designated on the map at the letter "A".

Ans. They resembled very much the marks on the muzzle corner.

Que. Did you block this poplar tree and if so what did you find?

Ans. I blocked the tree and found that the marks had not entered the wood.

Que. Did you preserve and can you file with the commissioner the blocks of this poplar. Ans. I will file with the commissioner the block from the west side of the tree—the other one I have not got it.

Que. In blocking the poplar at the Muzzle Corner were there any of the hacks which did not penetrate the wood? Ans. There was only two hacks *visable* on the bark of the tree after blocking the tree I found that one of those hacks had not entered the wood. There was a hack in the wood which did not appear on the bark.

Que. Was the poplar you blocked at the Muzzle Corner at the point where W. D. Sell located the beginning corner of the King survey and was it one of the tree he regarded as called for? Ans. It was the point shown me by one Mr. Rife as being where Sell run from.

Que. Was there any other blocking done at that point either

of poplar or *chesnut?* Ans. The poplar stump had been blocked and one of the down chestnuts had been.

Que. Have you seen the block taken from the down chestnut? If so who had it and where did you see it. Ans. I saw a block in the Court Room at Parkersburg that was said to have been taken from that chestnut.

Que. What was the sie of the hacks both in the bark and in the wood shown by your block taken from the poplar at the Muzzle Corner?

Ans. In the bark it was about two inches, I cannot state as to the length of the hack in the wood.

Que. In your opinion were the marks on the poplar you found on the line between P and S as old as those upon the poplar you found at the Muzzle Corner? Ans. They are.

Que. In passing west-ward from the line poplar to Blackies Fork state if you passed any high knobs, if so how many, and describe them?

Ans. Immediately after passing the poplar the line goes up the hill and along side thereof and crosses a high ridge and runs along near the top of same for some distance and then crosses another small branch of Knox Creek and a high ridge *befor* reaching Blackies Fork.

Que. What is observed along that line between Lester Fork and Race Fork in the way of high points or knobs? Ans. There is a high ridge between the two forks and after crossing onto Lester Fork the line is along the hill side of the White Oak branch of Lester Fork. Now from Lester to Race the line crosses the fork ridge of Lester Fork over the side of a very high knob and after crossing the right fork of Lester Fork the line runs up the side of a small branch and crosses the dividing ridge between said fork and Race Fork about three hundred feet to the right of a gap, and crosses the left fork of Race Fork and the fork spur of same over a high knob and down the side of a small branch, crossing Race Fork to point "S" on the map.

Que. What is the *diference* between the horizontal and surface measurement of that line?

Ans. I make the difference 100 poles.

Que. How far from the branch of Guyandott River were the two down chestnuts, the standing poplar and the poplar stump, at A on the map?

Ans. They were about 100 feet. I measured the distance but my field book is at Logan.

page 42.] Que. What is the description of the country lying between points south of P and S at the heads of these branches of Knox Creek Blackie, Lester and Race?

Ans. I *havent* been up Lester or Blackie fork farther than the line from P to S. There is no improvements on Race Fork above point S. There has in time been a house about one mile up Race Fork.

Que. Is that what is known as the William Estep place.

Ans. Yes sir.

Que. In passing over this line from P to S could you tell by looking whether there was a dividing ridge or range of mountains between the waters of Knox and some other creek or water on the other side further beyond to the south?

Ans. There was high ridges south of the line from P to S.

Que. Did these ridges and spurs along which you passed and crossed project or jet out from this dividing ridge or mountain?

Ans. *The* did.

Que. Would they be properly described as the spurs of the ridge dividing said creek—that is Knox Creek and the waters *beyong* to the south?

Ans. They would.

Que. The south west corner of the King Survey is described as three poplars and a sugar tree by a small branch of Knox Creek. do the grounds at and the location of the two poplar stumps and the point of the sugar tree in your opinion respond to that description.

Objected to by M. F. Stiles attorney for H. C. King as the question calls for an opinion which is not in its nature expert

about a *mater* which is a conclusion to be drawn by the court from the call of the grant and the description of the ground or locality enquired about.

Ans. They do.

Que. Did you run on the ground and measure the line from the corner on the Race Fork to the point described as twenty poles below the mouth of Gilberts Creek—that is from S to ZZ on the map?

Ans. I did.

Que. What is the true bearing of that line?

Ans. I ran North 39° East, and missed the point ZZ 810 feet to the east.

Que. What is the distance horiontally and also measured on the surface of that line.

Ans. The distance by surface measurement is 6559 poles or twenty and one half miles practically; horizontally it is 19 and *sixt* tenths miles.

Que. In running from two poplar stumps near Dan Justices house to the Gilberts Creek on Guyandott River, at what distance did your line cross Knox Creek?

Ans. At 3 6/10 miles horizontal and by surface 3 9/10 miles or 20865 feet.

Que. At what distance did you cross Tug Fork of Sandy River?

Ans. At twelve and one half miles horizontal measurement; and by surface measurement twelve miles and about thre fourths in all 68000 feet.

Que. At and near the mouth of what Creek does that line cross Tug River?

Ans. It would cross Tug River about five hundred feet below the mouth of Turkey Creek. And about three hundred feet above the mouth of Lick Branch.

Que. What waters does the line cross after leaving Tug River and between there and the mouth of Gilberts Creek?

Ans. The left fork of Turkey Creek, the right and Left forks

of the Spring Fork of Ben Creek and cross Gilberts Creek twice, to the point ZZ on the map.

Que. What is the general course of the east fork of Turkey Creek?

Ans. It is very near south.

Que. Where does it lie from the other fork of the creek?

Ans. It lies north west of the main creek?

Que. What divides, if any, do you cross on that line?

Ans. The dividing ridge between Turkey Creek and Ben Creek and the fork ridge of the Spring Fork of Ben
page 43.] Creek, and the di iding ridge between Ben Creek and Gilbert Creek and the ridge between Gilberts Creek and Guyandote River.

Que. Which one of those *ridge*, if any, constitutes the divide between Guyandott River and the Tug Fork of Sandy River?

Ans. The ridge between the Spring Fork of Ben Creek and Gilbert's Creek.

Que. What are the names of the Creeks entering in from the south into Tug Fork of Sandy River above where line ZZ.

Ans. *Greenbriar* branch is first: Long Branch, Bull Creek and Panther Creek.

Que. What is the natural or convenient route from the south-west corner at S to the Gilbert Creek corner at ZZ?

Objected to by M. F. Stiles attorney for H. C. King as immaterial there being no call for or reference to convenient or other routes in the grant or survey.

Ans. Down Race Fork and up Knox creek to the mouth of Guesses fork and up Guesses Fork to Pumpkin Fork and up same and crossing the ridge to upper Elk a branch of Knox Creek and crossing a ridge between said branch and Long Branch and down same to Tug River—down Tug River to Turkey Creek, up Turkey Creek and crossing a ridge between same and Ben Creek and down the Spring Fork of Ben and up same across the dividing ridge between Ben Creek at a gap known as the twisted gun gap and down Gilberts Creek to the mouth to the point zz.

Que. What would be the distance between those points to follow that route? Ans. It is feet or poles making miles.

Que. What is the distance from the four white oak corner at P following the course of Knox Creek to the mouth of Race fork and thence up Race Fork to the three poplar and sugar tree corner indicated by S on the map? Ans. It is feet making poles or miles.

Que. What is the distance from the beginning corner A to the four white oak corner P shown by that map? Ans. It is thirteen and four tenths miles.

Q. Where is *you* point ZZ on the map located? Ans. About twenty poles below the point shown me as being the mouth of Gilbert Creek and about twenty feet from the bank of Guyandott River and about ten *polls* below the mouth of Gilberts Creek at the present time.

Que. Topographical feature of the land below the mouth of Gilbert's Creek?

Ans. A small bottom below the mouth of Gilberts Creek of which there is about eight acres of level ground.

Que. Have you been up and down Tug River from Turkey to War Creek and if so how many Creeks empty into the river from the north-east side? Ans. I have. There is as well as I remember it there is three creeks Fourpole, Long-pole and Short-pole.

Q. How many enter from the south side? Ans. Four between the same points viz. Greenbrier, Long Branch, Bull Creek and Panther Creek.

Que. What is the distance from the mouth of little War Creek of Tug River up to the line where A to P crosses the river?

Ans. It is about two tenths of a mile.

Que. What is the length of the line from A to the Guyandotte River at MM? Ans. It is about five and nine tenths miles.

Que. Is that the line you ran a few years ago in 1896? Ans. I traced the line from point A to Guyandott River north 4° East.

Que. Why did you stop that line at the Guyandott River?

Objected to by M. F. Stiles attorney for King as the same is immaterial for the reason that his stopping would not effect any fact as to the line.

Ans. I stopped on a small river flat about fifty feet below the mouth of Brooks branch of Guyandotte River. I stopped there because I was *instructe* by John A. Shepard to trace the line from point A on the map to Guyandotte River.

Que. What calls did you run that line by? Ans. I had with me the calls of the Robert Morris 480000 acre and
page 44.] the Robert Morris 500000 acre patents.

Que. I read you the calls in the Morris 480000 acre survey) "From the print A on the map. "North 6800 poles crossing Laurel creek and several branches of the same—the dividing ridge between said creek and Huff or Cain's Creek and crossing the last mentioned creek a small distance above the mouth to three sugar trees and *and* a buckeye by a *small* branch of Guyandott River." where would you locate that line as an expert surveyor.

Question objected to by M. F. Stiles attorney for King on the ground that it is incompetent and immaterial, what he would do could in no way effect the location of the line made in 1794 by the surveyor of the 480000 acre tract, if located by him, and if not located by him its proper location is a question of law.

Ans. This call calling for timbers on a small branch of Guyandott River calling for crossing creeks and not mentioning Guyandott River the largest stream it would cross should it be run the full distance called for in the patent, I am of the opinion that Mr. Taylor in making the survey made his corner on a small branch and did not cross Guyandott River.

Que. Was the land cleared at MM the end of that line?

A. It was.

Que. Did you find the three sugar trees and buckeye called for?

A. I did not.

Que. What lines of the 480000 have you run?

Ans. I traced the line from point A on the map to MM at Guyandott River.

Que. Describe on the map what in your opinion as an expert surveyor is a correct location of the King grant.

Objected to by M. F. Stiles attorney for H. C. King, as incompetent the location being a matter of law from the evidence and it not appearing that the surveyor has run but a small portion of any *alledged* lines or calls of the grant.

Ans. Having located the Muzzle corner designated as point A on the map I would run courses and distances called for and not finding any monuments, I would try to ascertain or find out where the four white oaks stood as called for at point P on the map then I would run for point S as calling for three poplars and a sugar tree by a small branch of Knox Creek not finding that point and knowing of the mouth of Gilberts Creek also the mouth of Turkey Creek I could go to the mouth of Gilberts Creek and run a line across Tug River at the mouth of Turkey Creek and extend said line to intersect with the line P to S, then I would go back to the mouth of Gilberts Creek at point ZZ on the map and run a line as called for in the patent north 10° East 4450 poles with a variation of about five degrees east, the same calling for pointers and being of the opinion that in case a surveyor would call for pointers and this distance giving out in a place where there is a great deal of large timber I am of the opinion that this line was never run, then I would calculate a bearing and run back to point MM on the map and then to the beginning.

Que. What and how many natural monuments called for in the survey did you find on the line from S to ZZ?

Ans. I found Knox Creek, Tug River, Turkey Creek, the dividing ridge between the waters of Tug and Guyandott River and crossed Gilbert Creek twice and a small bottom below the mouth of Gilberts Creek.

Que. What natural monuments were called for on that line were not found on the ground.

Ans. Buffalo and Pigeon Creeks are not crossed by said line.

Que. What is found upon the ground along that line after leaving Turkey Creek and before reaching the ridge between Guyandotte and Sandy Rivers?

Ans. First I crossed the right fork of the spring fork of Ben Creek, the fork ridge of same, the left fork of Spring Fork and the dividing ridge between Spring fork of Ben Creek.

Que. Is it customary among surveyors in making
page 45.] an original survey to call for specific kinds and number of trees as corners, unless such surveyor was at the place and selected such timber for corner trees?

Objected to by defendant King as immaterial as what the custom of surveyors may be cannot effect the facts of the existence or non-existence now or heretofore of any trees mentioned in the grant to Morris.

Ans. It is not.

Q. What is you opinion as to whether James Taylor who made the King survey fixed and marked three poplars and a sugar tree at the south west corner of that survey and where in your opinion did he locate it?

Objected to by defendant King as incompetent as the question is one for the court and not for the witness and he having testified to no sufficient knowledge from which to form an opinion if his opinion were competent or material. The opinion would be purely a matter of speculation and not of judgment based upon evidence.

Ans. I am of the opinion that James Taylor was on the ground and marked the corner at the south-west corner of the Morris survey and that he marked said timbers on a branch of Knox Creek.

Que. Which is the larger branch of Knox Creek—Lester fork *of* the Race Fork?

Ans. The Lester Fork is the largest.

Que. How do the Paw Paw and Race Forks compare. Ans. the Paw Paw Fork is larger than the Race Fork.

Que. A moment ago you said that in locating the survey you would run the full course and distance from the Gilberts Cor-

ner to pointers and that you would then change the course of the call and run to the three sugar trees and buckeye at MM—the north-west corner of the 480000 acre survey, why would you do this?

Objected to by the defendant King as immaterial. His reason could not effect the location of the Morris Grant.

Ans. After locating the point MM calling for three sugar trees and a buckeye by a small branch of Guyandott River that being the location of the timbers called for in the patent and having traced the line from A to MM I would run a course from MO, that being the point where the pointers are called for I would run the line to intersect the north-east corner of the Robert Morris 480000 acre tract. I would do this because I *consider* the point MM the true location of the north-west corner of the Robert Morris 480000 acre survey.

Que. Why would you not run east as called instead of running almost south to the north-west corner of the 480000 acre survey.

Ans. To run east as called for in the patent. I would not cross Guyandott River therefore having located point MM I would run to that point.

Que. After leaving the pointers what place are you *endevoring* to reach?

Ans. Three sugar trees and a buckeye by a small branch of Guyandott River that being the north-west corner of the Robert Morris 480000 acre survey as called for in the patent.

Que. In so *locatong* that line you make course and distance give away to monument. Ans. I do.

Que. In your opinion was James Taylor at the mouth of Gilberts creek and established the corner to this survey?

Objected to by defendant King, because it calls for an opinion as to a fact concerning which no evidence has been given and the question whether he was there or not, if material is to be determined by the court and not by the witness, and the question is further incompetent.

Ans. I am of the opinion and believe that James Taylor was

on the ground and marked the corner as called for in the patent at that point.

Question and answer objected to by the plaintiff as incompetent.

Que. You may state if you know, where the Gor-
page 46.] don Cloyd survey of 7800 acres is located.

Objected to by defendant King as incompetent. A survey cant be located in any such off-hand manner and no such survey is in evidence.

Que. I now hand you to be filed with the commissioner a certified copy of that survey and copy of the plat.

The defendant King objects to the *introduction* of the survey in evidence. It not apearing to have been made by the surveyor James Taylor who reported the survey of the Morris Grant.

Ans. by witness:—I am of the opinnion that the Gordon Cloyd survey lies on the east side of *Guiandott* River from Huffs Creek to Gilberts Creek.

Que. Are you familiar with the location of Huffs Creek; the mouth of Gilberts Creek and the Guyandott River between Huff and Gilberts Creek?

Ans. I am.

Que. Is that the location of the Cloyd Survey?

Objected to by defendant King.

Ans. I am of the opinion it is.

CROSS EXAMINATION

By M. F. Stiles attorney for the defendant Henry C. King.

Before commencing the cross examination counsel for contesting defendants desired to ask another question as follows.

Que. How far is it from the line S to ZZ where it reaches Tug River on the south bank up the river to a point oppo[illegible] to the mouth of Turkey Creek?

Ans. It is about 450 feet. A line drawn at right angles from the mouth of Turkey Creek to intersect the line S to ZZ is 229 feet.

And thereupon Mr. Stiles proceeded with the cross examina-

tion.

Que. When was the work done by you in Buchanan County Virginia?

Ans. In September October and November 1901.

Que. Was all the work you have spoken of except tracing a line from A to MM on Guyandott River and blocking the poplar tree at A done at that time. Ans. It was.

Que. For whom or at whose instance did you do it?

Ans. I was in the employment of Mr. E. Gaujot and he sent while I was on a vacation at Logan he sent for me and told me that he wanted me to go to Knox Creek to do some surveying in the King case. After going up there I received my instructions from Mr. Campbell and Mr. Shepard.

Que. By the King case you refer to the present case?

Ans. I do.

Que. Before doing the work or at any time did you give any notice that you proposed to do any surveying in the case to Mr. King or his counsel or any representative of his?

Ans. I did not.

Que. Was Mr. King or his counsel or any representative in the case present with you at any time during the progress of the work?

Ans. No sir. Not that I know of.

Here counsel moves to strike out all the testimony of the witness and particularly all the testimony relative to work done by him during the year 1901 together with map filed by him.

The further cross examination of the witness is without waiver of said motion.

page 47.] Que. By whose direction did you block the poplar tree at A?

Ans. At the direction of the attorneys for the defendants in the case of Henry C. King against M. B. Mullins and others.

Que. That was done during the trial of that cause?

Ans. It was.

Que. Was any notice given by you to Mr. King or his counsel

or representatives of the *prop-sed* blocking of that tree or were any representatives of his present? Ans. There was not.

Que. Were you acting under any order of survey or exparte for the defendants?

Ans. I was not acting under any order of survey only at the instance of the parties heretofore mentioned.

Que. Was the tree marked to correspond with any line of the Morris 320000 acre tract or 480000 acre tract or 500000 acre tract?

Ans. It was marked on the side represented by the line CX to A.

Que. That would be the south-east side? Ans. Yes sir.

Que. Did you block the north side of that tree and if so state whether or not you found any corner marks therein.

Ans. I did not block the north side of the tree. I did not find any marks on that side.

Que. You say you run the line A-MM by the calls of the western line of the 480000 acre tract that call after leaving the two poplars and two chestnuts on the banks of Guyandotte River at A is "thence north 6800 poles, crossing Laurel Creek and several branches of the same, the dividing ridge between said creek and Huffs or Cains Creek and crossing the last mentioned creek above the mouth to three sugar trees and a buckeye by a small branch of Guyandotte River," did you run on the course with such variation as in your judgment would follow a line that in 1794 was due north from A?

Ans. I only traced the line with an instrument. I did not measure same I ran the line four degrees east which I considered to be the proper variation.

Que. Did you cross any Laurel Creek? Ans. I crossed no creek that I knew to be named Laurel Creek.

Que. Or any branches of Laurel? Ans. I did not.

Ans. Do you know of any Laurel Creek in that neighborhood?

Ans. I do not. I never enquired the names of any creeks except Muzzle Creek and Brooks Branch and Huff Creek.

Que. You are acquainted with that locality? Ans. I never was there but one time.

Que. Did you ever hear of any Laurel Creek in the neighborhood? Ans. No.

Que. The only creek you crossed between A and Little Huff was Muzzle Creek on which corner A is located, is it not?

Ans. I crossed one branch of Little Huffs Creek and crossed Little Huffs Creek and some small branches.

Que. Did you cross any dividing ridge between A and Little Huff?

Ans. I crossed over the spur ridge of Muzzle Fork of Little Huff.

Que. Is that not a mere point and not a dividing ridge?

Ans. It is about two miles to the head of either fork of Muzzle Fork.

Que. Is there any dividing ridge between Muzzle Creek and Little Huff?

Ans. Muzzie Creek is a branch of Little Huffs Creek and therefore there would be no dividing ridge except as to different streams of Little Huffs Creek.

Que. Muzzle Creek flows north or north east into little Huffs Creek.

Ans. The general course of it is north east.

Que. In what direction is Laurel Creek on the map *accompaning* the original survey of the 480000 acre tract represented as flowing?

Ans. North-west.

Que. On the map last mentioned how far is Laurel Creek represented as being north of Muzzle Corner?

page 48.] Ans. About $7\frac{3}{4}$ miles.

Que. Would that distance put the creek north or south of Guyandotte River? Ans. It would put the creek north of Guyandott River about one and three fourth miles.

Que. How far south of *Goyandotte* River does Taylor represent it?

Ans. About thirteen and a fourth miles.

Que. Where would that distance put Laurel Creek with reference to Guyandotte River on the map you have filed with your testimony which we will designate as your map?

Ans. It would put it five and a quarter miles south of Tug River.

Que. 6800 poles is how many miles from A and at what point does it terminate.

Ans. It is twenty one and one quarter miles and it terminates at point M on the map.

Que. On his map Taylor makes Guyandotte River more than twenty one miles from A, how far from A do you find it by your map as it actually exists on the ground?

Ans. About five and three fourths miles.

Que. The line north from A would properly be described until it reaches little Huff Creek as running down Muzzle Creek, according to your map?

Ans. It does run down Muzzle Creek.

Que. The line North 6800 poles calls for crossing Huff or Cains creek a small distance above its mouth, how far above the mouth does the line cross as you have laid it down?

Ans. It crosses Huffs Creek about three and one fourth miles from the mouth?

Que. What distance from the Muzzle corner? Ans. About two and one fourth miles.

Que. At what distance does Taylor on his map represent the line as crossing Huff or Cain Creek north of that corner?

Ans. At about twenty miles.

Que. Instead of Two mile and a half as you found it? Ans. Yes sir.

Que. You locate the corner MM as on Guyandott River do you?

Ans. I locate it in a small flat about fifty feet below Brooks Branch.

Que. How far from the river? Ans. About 100 feet.

Que. Why did you select that point as a corner? Ans. I having traced the line from point A north 4° East calling for

three sugar trees and a buckeye by a small branch of Guyandotte River and not calling for crossing Guyandotte River, I stopped at that point.

Que. Did you find any trees at that point?

A. I did not.

Que. You could have run to the river or have stopped at a great many places short of the river and still have been by a small branch could you not?

Ans. If I had stopped short of Guyandotte River or Brookes Branch I would have been on the waters of little Huffs Creek should I have crossed Guyandotte River the first water course I would have been on would have been Cub Creek.

Que. Surveyor Taylor speaks of Muzzle Creek as a branch of Guyandotte River does he not? Ans. He does.

Que. You could have stopped anywhere on Muzzle Creek and still have been by a branch of Guyandotte River?

Ans. I could have been by Muzzle Creek which is a branch of Guyandotte River.

Que. Is Muzzle Creek a branch of Guyandotte River or a branch of Huff's Creek? Ans. Muzzle Creek is a branch of Little Huff's Creek.

Que. Is it not apparent to any one going as a surveyor from A north to Guyandotte River that Muzzle Creek flows into and is a branch of Little Huff Creek and is not properly a branch of the River?

Ans. A surveyor tracing a line from A North would very readily find out that it was.

Que. He would also discover would he not that there was no other creek between Muzzle and Little Huff?

Ans. It would cross another branch of Little Huff

page 49.] before crossing Little Huff Creek.

It is ordered that these proceedings be now adjourned until tomorrow morning at the same place.

J. T. GRAHAM
Commissioner.

Saturday May 10th. 1902 met pursuant to adjournment on

yesterday. Present the same parties as on yesterday: Thereupon counsel proceeded with the cross examination of the witness G. S. Stone, as follows:

Que. Is there any creek between Muzzle Creek, mentioned by Taylor as a branch of Guyandotte River, and Little Huff Creek?

Ans. The line would cross near the mouth of a small branch of Little Huff Creek and between Muzzle Creek and Little Huff Creek.

Que. When you retraced the line north from A to Guyandotte River at the direction of Mr. Shepard what were you endeavoring to ascertain or accomplish?

Ans. Whether or not a line run from point A with a variation North four degrees east, would strike a small branch of Guyandotte River.

Que. You *didont* measure the distance but did you note about how far it was to the river? Ans. I did not.

Que. Can you estimate now about how far you ran independent of the measurements on the map, if so how far was it?

Ans. About six miles.

Q. You followed the course given in the grant did you?

Ans. I did with four degrees variation to the east.

Que. Why *didont* you disregard the course and run so as to cross Little Huff a small distance above the mouth, as mentioned in the grant.

Ans. I was instructed by the attorneys heretofore mentioned to run the line north four degrees east.

Que. Did not the trees at the Muzzle corner A stand on the bank of the creek? Ans. They stood about one hundred feet from the creek and on a small flat.

Que. *Didont* they stand on the creek bank?

Ans. From the flat which the corner stood on it was very steep down to the creek.

Que. Was there any room for trees between these and the waters edge?

A. There was.

Que. Did not the bank break off right by these trees clear down to the edge of the creek.

Ans. From the poplar that I blocked to the creek it was very steep.

Que. There was no timber between those trees and the waters edge.

Ans. I dont think there was.

Que. Can you *indicated* by some letter or figure, on the map the position of the poplar tree from which you took the block west of the point P *indicated?*

Ans. On the west bank of Knox Creek at the point I have designated on the map by figure 7.

Que. Did you find any other marked trees along the line you ran?

Ans. About three hundred feet south of the line P to S and on the bank of the right fork of Lester Fork I found a beech fallen with two ax marks in one side and on the ridge between the forks of Race Fork—about thirty feet north of line P to S I found a hickory marked with two hacks on the west side.

page 50.] Que. Did you block any of those trees? Ans. I did.

Que. Have you the blocks here? Ans. I have the block from the beech.

Que. None of these trees were on the line that you have laid down from P to S were they? Ans. They were not.

Ans. What was the condition of the country between those points as to being wooded or otherwise? Ans. From P to Blackies Fork there is considerable large timber, at Blackies Fork the ground is cleared and from about one thousand feet west of Blackies Fork to point S there is considerable large timber.

Que. Were there not a good many large trees—say from twenty-four inches up, on that line that you ran from P to S?

Ans. I remember of making an off-set by one large oak tree between Race Fork and Lester Fork of Knox Creek.

Que. Were there not in that distance a great many good sized trees or large trees within ten feet or so of one side or the other of the line you run? Ans. There were.

Que. What search did you make for marked timber of any kind from P to S on either side of the line you were running?

Ans. At the crossings of ridges and branches I searched for near a half a mile both north and south of line P to S.

Que. Did any one assist you, if so how many? Ans. Daniel Justice and Mose Charles were employed to look out for line trees.

Que. When did you first discover the poplar tree at the point indicated by the figure 7.

Ans. Mose Charles first found that poplar tree. He showed me the tree the 20th. day of September 1901.

Que. When did you take out the block? Ans. I think about two weeks after the tree was shown me, I blocked the east side of the tree.

Que. Who was present at that time? Ans. T. J. Mathews, William Maynard and I do not remember the other party.

Que. You refer to T. J. Mathews the surveyor who lives six miles from Charleston at Spring Hill

Ans. I mean T. J. Mathews who is now in the court room.

Que. Was he present when the tree was trst shown you? Ans. He was not.

Que. Do you know how he came to be present at the time it was blocked, if so state how? Ans. I asked Mr. Mathews to go with me when I went to block the tree.

Que. Where was he at the time that you made this request? Ans. He was at our camp on Knox Creek.

Que. When did you block the other side of the tree? Ans. About April ?? 1902.

Que. Who was present at that time? Ans. Mr. N. L. Reynolds and E. E. Montgomery.

Que. Who is E. E. Montgomery? Ans. I never knew Mr. Montgomery until he was with me to block this tree. He keeps a boarding house at Hurley.

Que. The day this last block was taken out was the day fixed by the commissioner in his notice to begin the taking of evidence in this case was it not?

Ans. It was.

Que. Were you summoned to appear before the Commissioner at Huntington as a witness that day were you? Ans. I was.

Que. Had that summons been served prior to that time? Ans. I received the summons by letter at Turkey Post office, West Virginia. on the 20th. of April.

Que. Did you expect to be called to testify in this case before the commissioner with reference to that tree and the other surveying and investigation you had done and made on Knox Creek.

Ans. I had been told that I would be used as a witness in the case.

Que. You were acquainted were you not with the fact that I was counsel for Mr. King in this case and his general counsel in cases effecting the tract of land in question?, and had been aware of that fact for two or three years or more. Ans. I

page 51.] was.

Que. Did you in any way or at any time acquaint me or Mr. King or any representative of his with the intention to block this tree? Ans. I did not.

Que. Was the tree at figure 7 left standing by you or was it cut down? Ans. It was standing.

Que. That tree seems to stand from your map on the south side of Knox Creek does it do so in fact? Ans. It does.

Que. A line from P to the tree extended sufficiently would reach the point H on the map or its immediate vicinity, would it not?

Ans. It would reach the line, H to I about one half a mile north of H.

Que. You say that in the poplar that you blocked at the Muzzle Corner you found a mark in the wood that was not *visable* on the bark?

Ans. I did.

Que. That would indicate would it not that very old marks

sometimes disappear from the bark and are apt to become *indiscernable?*

Ans. It would.

Que. Is it not your experience that such is often the case?

Ans. That is the only instance in which I ever found the *annulations* in the wood where the marks did not appear on the bark. the wood where the marks did not appear on the bark.

Que. You only discovered marks on the south-east side of that poplar at A, I believe? Ans. All the marks I found on the tree were on the south-east side.

Que. About how old marks have you encountered in your experience as a surveyor? Ans. The usual run of my work has been that the marks would be about sixty years old,. The only instance in which I have blocked a tree to these large surveys was in this case.

Que. The oldest mark you have examined as actually shown by the annulations is the mark found in the poplar at the Muzzle corner, it it not. Ans. It is. I have examined corner marks—or said to be corner marks made as early as 1782, this was said to be a corner to William Ward survey of 500 acres, but did not block the tree.

Que. Is it not very difficult to discern and distinguish marks of one hundred years old or upwards from natural *of* casual blemishes or defacements of the bark?

Ans. It is.

Que. Did you run straight line from S to ZZ? Ans. I did, to a point eight hundred feet east of ZZ.

Que. You say from S to Knox Creek by horizontal measure is three and six tenths miles and by *surfact* measurement is about three and nine-tenths miles—a difference of three tenths of a mile?

Ans. Yes sir.

Que. From S to where you crossed Tug Fork of Sandy River it is what distance by horizontal measurement and what by *surfact* measurement.

Ans. By horizontal measurement it is about twelve and one

half miles and by surface measurement it is about twelve and nine tenths miles—or twelve miles and 4640 feet.

Que. Did you find any line trees on the way from S to ZZ?

Ans. I did.

Que. What and where were they?

Ans. The first I found was a white oak on the ridge between Knox Creek and the Bee Branch of said creek.

Que. Did you block it? Ans. I did not.

Que. Why not. Ans. It was a hollow tree and I was confident that I *wouldent* find any annulations in it—the marks *dident* appear to enter the wood.

Que. Did you take the bearings of that tree from any point which would identify its locality thereafter?

Ans. It is about north thirty-nine degrees east 2635 feet of the point where line S to ZZ crosses Knox Creek and in a gap in the ridge at the head of Bee Branch.

Que. What other trees did you see. Ans. About 160 feet north of the white oak I saw a chestnut oak marked with two hacks on the north side and one on the south side?

Ans. Did you block either of those marks?

page 52.] *Que.* I did.

Que. Did you preserve the blocks. Ans. I did.

Que. Those two trees stood north and south of each other did they?

Ans. From the white oak to the chestnut oak it was north seventy-five degrees east 160 feet.

Que. There are numerous small surveys located in that neighborhood are there not? Ans. There is.

Thereupon M. F. Stiles attorney for Henry C. King asked that these proceedings be *posponed* until Monday Morning, which request the contesting defendant objected to and thereupon on said motion the Commissioner adjourned his proceedings until Monday Morning at the same place to begin promptly at ' o'clock a. m.

J. T. GRAHAM.

Commissioner.

Monday May 12the. 1902: Met pursuant to adjournment on Saturday: Present the same parties as heretofore.

Thereupon Mr. Stiles attorney for the defendant Henry C. King continued the cross examination of the witness G. S. Stone, as follows:

Que. You spoke of a convenient route from P to S as being down Knox Creek to the mouth of Race Fork and up Race Fork to S and also described a convenient route from S to ZZ, you state the distance by such *convient routs* to be from P to S fourteen and six tenths miles and from S to ZZ miles, what significance, if any do you attach to these facts?

Ans. It shows the practical route from P to S not crossing any ridges but extending all the time along water courses.

Que. What would be a *convient* route in the same way, from A to MM?

Ans. It would be down Little Huffs Creek and branches to Guyandotte River and up same to point MM.

Que. What would be that distance as near as you can estimate it.

Ans. It would be about ten miles.

Que. If you were to undertake to establish a station at MM on Guyandotte River that should be due north of the Muzzle Corner at A by following down the meanders of Little Huff Creek and up Guyandotte River would it not require very accurate surveying, very numerous and careful measurements, and calculations and involve more labor and consume more time in order to reach such a spot than to establish the same by running north from A?

Ans. It would.

Que. Would not the same be true with reference to running down Knox Creek and up Race Fork in an attempt to establish a corner that should be west of P?

Ans. I could run a meander line as described quicker than I could run a straight line, but it would take some time longer to calculate the bearing.

Que. Approximately how many measurements would have to make by that method.

Ans. I made 126 stations in running this line.

Que. In doing so you changed the course of your line at every station did you not, instead of running from beginning to end on one course?

Ans. I did.

Que. Approximately how many lines did you run—by which I mean how measurements and how many times did you set up your *compas* in a different course, in running the so called *convient* route from S to ZZ.

page 53.] Ans. 126 times. I made 126 stations and I am of the opinion that I changed my bearing each time I set up the instrument.

Que. In running a straight line of any length, in any direction, you do not change your bearing, however many times you may set up your compass do you?

Ans. I do not. Except in making off-sets to get around trees and cliff or any other obstructions.

Que. Let us take up the second line of the survey as reported by James Taylor and compare it with the line you ran from P to S. "Thence leaving said survey west 3840 poles" what is your course and distance from P to S.

Ans. The line from P to S as run by me is north seventy-nine degrees and twenty minutes west. The distance is 2463 poles and .65 feet.

Que. "Crossing said creek and some of the branches thereof", how many times do you cross Knox Creek?

Ans. It crossed Knox Creek one time.

Que. "And along the spurs of the ridge dividing the waters of said creek and Peters Creek—a branch of Sandy River", where would that ridge necessarily lie with reference to the line?

Ans. I am of the opinion the ridge would lie south of the line P to S and south of Knox Creek.

Que. Where in fact does the ridge dividing the waters of Knox Creek and Peters Creek lie?

Ans. I am of the opinion that it is east of H to I, between H and Tug River and between Knox Creek and Peter Creek as shown on the map.

Que. It is west of Knox Creek and north-west of the line you ran?

Ans. It is.

Que. The next line of the grant is north eight thousand poles. You have stated some of the objects called for, that you think are found on the line S to ZZ, what prominent natural objects do you find on the line S to ZZ that are not mentioned in the line described by Taylor?

Ans. I crossed two forks upper Elk—a branch of Knox Creek; also Long Branch and Greenbrier branch and Ben Creek.

Que. And the high ridges between upper Elk and Long Branch and Long Branch and Greenbrier?

Ans. I crossed the dividing ridges between the branches mentioned.

Que. Your line S-ZZ for the first three and one half miles from S runs down Race Fork, does it not?

Ans. It does.

Que. Does Taylor so describe his western line, or so represent it on his map?

Ans. His map does not show crossing any stream before crossing Knox Creek.

Que. You have mentioned and named the creeks on the south side of Tug River—above Turkey Creek, the first one being Greenbrier and the second one Long Branch, how far from the mouth of Turkey Creek and in what direction is the mouth of Greenbrier?

Ans. It is about three fourth of a mile south of Turkey Creek.

que. How far and in what direction does Taylor represent on his map the mouth of the first creek above his Turkey Creek.

Ans. About north eighty degrees east and about two and three-fourth miles.

Que. And what distance does he represent the second creek on the Sandy River on the south side above Turkey?

Ans. About north seventy degrees east and about seven and three fourth miles.

Que. How far and in what direction from the Turkey Creek near your line is Long Branch—the second creek above Turkey on the south side.

Ans. About one mile and about five degrees south east.

Que. Your line S to ZZ does not touch Buffalo Creek of Pigeon —Creek, the streams called for on the western line of the grant?

Ans. It does not.

Que. Where is Buffalo Creek of Sandy River?

page 54.] Ans. It is not on my map. It is about twenty miles west of the mouth of Turkey Creek—that is the mouth of Buffalo Creek.

Que. How far does your line S-ZZ cross the branches of the Spring Fork of Ben Creek from their heads? Ans. About two miles from the head of the first fork and about one half mile from the head of the second fork.

Que. How far from the head of Pigeon Creek does Taylor represent his line as crossing?

Ans. About four and three fourths miles.—Upon measuring it since giving the foregoing answer I find it to be five miles.

Que. Mr. Taylor on his map represents the western line of the tract as striking Gilberts Creek, near the junction of two main forks and running down Gilberts Creek to near the mouth on a due north course; on what course must a line be run to strike Gilberts Creek as laid down on your map, at the junction of the main forks and run two or three miles down the creek to the mouth?

Ans. To run from the forks of Gilbert Creek to the mouth thereof would be about south seventy-five degrees east and about one and six tenths miles.

The contesting defendants object to all of the foregoing answers and questions which seek to determine the course of any line or the location of any object as determined by the apparent location and course of any stream laid down on James Taylor's plat and survey, for the reason that it is demonstrated beyond a controversy

that James Taylor merely sketched in the streams on his map without any meandering of the same and for the mere purpose of showing that the land which he located was watered by certain streams and his attempt at accuracy at locating said streams was where a line terminated on a stream or crossed a prominent stream at the mouth of some branch. And because James Taylor has not put on this plat other streams which were, in fact, called for by him. James Taylor was surveying and locating lands by lines and corners and was not out for the purpose of locating streams and branches. The course of these questions is an attempt to locate lines of the survey by that which was sketched in on the plat. The surveyor had knowledge that certain water courses were in the *boundry* and he sketched them in on the plat without surveying the same.

Counsel for the defendant Henry C. King, states that the purpose of the questions objected to is to *demonstrate* the contention that both the lines and the streams beyond the point P and north of the point A were platted and were not surveyed and that the said Taylor had no accurate knowledge and no personal *acquaintence* of the localities and objects referred to and to *demonstrate* further that the lines, streams and other monuments contended for by the contesting defendants as constituting or marking the western and northern *boundrys* of said tract are neither the true ones nor the ones referred to in said grant and survey.

Que. Coming to a point where counsel for contesting defendants concede an attempted accuracy in his map on the part of said Taylor I will ask you in what direction he shows Sandy River to approach the mouth of his Turkey Creek for the last mile of its course?

Ans. It approaches it about south eighty *drgrees* west.

Que. In what direction does Tug River for a corresponding distance approach the mouth of the Turkey Creek laid down near your line S to ZZ?

Ans. About north ten degrees west.

Que. On what course does Guyandotte River as shown by Taylor cross the line of his survey near Gilbert Creek?

page 55.] Ans South west.

Que. On what course does the same river cross the line you have laid down as the *correspong* line at the corresponding place?

Ans. Very near north.

Que. Is it not apparent to a ptrson standing at ZZ that a line north ten degrees east or a line varying several degrees either way from north would run down Guyandotte River for a considerable distance?

Ans. It is.

Que. The line that you have laid down north ten degrees east at that point practically runs down the river for a distance of five or six miles, does it not? Ans. It does.

Que. At what angle with the river does Taylor make his north ten degrees east line? Ans. About an angle of about one hundred and fifty degrees.

Que? What are the dimensions of the bottom at the mouth of Gilbert Creek?

Ans. I have never measured the bottom, but there *as* about eight acres.

Que. The greater portion of it lies up Gilbert Creek? Ans. It does.

Q. It lies along Gilbert Creek with the end fronting the river?

Ans. It does.

Que. You would speak of it as the bottom of Gilberts *Crkks* would you not.

Ans. I would speak of it as a bottom of Guyandotte River and Gilbert Creek.

Que. The lines PH—HI—IJ and AM are laid down according to the course and distances of the patent, are they? Ans. I did not protract the lines but laid them down from a map made by W. D. Sell.

Que. Can you tell whether they are correctly laid down?

Ans. With the exceptions of a line J to M I am of the opinion

they are as to course and distance. The line J. to M. *calles* to run east sixty six hundred and twenty poles and it seems to be laid down on the map as running south east.

Que. State whether or not a person going up Turkey Creek across the ridge and down the Spring fork of Ben Creek could observe that the two branches on the line S-ZZ south-west of Gilbert Creek are branches of the same stream coming together a short distance of your line. Ans. He could.

Que. When and where did you begin your work and explorations in this land in Buchanan County Virginia.

Ans. I began in the 3rd. day of September 1901 at a point on the Race Fork of Knox Creek about one mile south of S on the map.

Que. How far below Dan Justices is the next clearing? Ans. About one mile.

Que. How large was the clearing at and about S when you first were there?

Ans. It looked to be about twenty acres of cleared ground.

Que. How far to, the east and west of S. does that clearing extend?

Ans. About one fourth of a mile each way.

Que. What was the *appearence* of the depression that you have spoken of near one of the poplar stumps? Ans. There was a sink hole in the ground where a tree seemed to have rotted.

Que. Was the tree still *visable* or any part of it?

Ans. I dug down and found roots which looked as though there had been a tree stood at that point.

Que. What is the course of Turkey Creek *thorugh* the last half of its length? Ans. It is south-west.

Que. For a short distance from the mouth what is its course?

Ans. For a short distance about twenty poles, I am of the opinion the creek flows nearly west.

Que. The line S-ZZ crosses the river below the mouth of the creek and instead of running up the creek run up west of the ridge dividing Turkey Creek from Lick Branch and Tug River and merely cuts across the extreme head of Turkey Creek, does it not?

Ans. For a distance of about one mile it runs along the side of the ridge next to Lick Branch then crosses to and runs up the side of the ridge next to Turkey Creek and *croses* to two forks of Turkey Creek.

Que. When were you first shown the stumps at S? A. During the month of September 1901.

page 56.] Que. How long were you engaged in surveying and exploring this territory in Buchanan County, Virginia and elsewhere, for the purpose of this suit, since last August? Ans. About three months.

Que. For whom is Mr. Gaujot the representative or land agent, in this state?

Ans. I understand that he represents the Kountze Brothers, I understand they live in New York.

Que. You say you have surveyed two lines of the John Green 30,000 acre survey? Ans. I have I run XX to AX and from AX to YY as shown on my map.

Que. How did they run with the patent call for course?

Ans. In running from XX to AX I ran about one half a mile to right of point AX and AX to YY I ran about one fourth mile to the right of YY.

Que. What variation did you allow? Ans. I do not remember.

Ans. I believe about four degrees.

Que. Did you measure the distance from the mouth of Little War Creek to the line A—P on the ground or on the map? In stating the distance on direct examination you said it was so many feet?

Ans. I measured it on the map.

Que. Draw a line from the mouth of Thacker Creek to the mouth of Island Creek, on the map, and from the mouth of Beech to the mouth of Island Creek, and from the mouth of Beech to the mouth of Rich Creek and from the Mouth of Thacker to the mouth of Rich Creek; now if you assumed that Thacker Creek is Turkey Creek and Island Creek or Rich Creek is Gilbert Creek, would not the lines you have laid down be well described as run-

ning up Turkey Creek, crossing another Creek before you reach Pigeon Creek, crossing Pigeon Creek and the dividing ridge between Sandy and Guyandotte Rivers and Gilberts Creek twice to a point twenty poles below the mouth of the creek assuming it to be drawn twenty poles below the mouth?

Contesting defendants object to this and the foregoing questions relating to the lines just drawn on the map by the witness for the following reasons: it is not cross examination, the witness is incompetent to speak upon the subject of the question not having surveyed and located the objects referred to therein and the matter sought by the question is irrelevant. And they further state that if defendant King insists upon pursuing this as well as his *enquirey* into the John Green surveys he makes the witness his own.

Ans. If the water streams as laid down on this map are correctly laid down a line drawn from the mouth of Beech Creek to the mouth of Rich Creek would run nearly up Beech Creek and would cross Pigeon Creek a dividing ridge between Pigeon Creek and Island Creek and cross Island Creek and a dividing ridge between Island Creek and Rich Creek and Rich Creek twice. A line drawn from Thacker Creek to Island Creek as shown on the map would run up Thacker Creek for about one mile and would cross Mate Creek, Pigeon Creek, the Rock House Fork of Pigeon Creek, Pine Creek of Island Creek, Whitmans Creek of Island Creek and Island Creek twice and the dividing Ridge between Sandy and Guyandotte River. A line drawn from Thacker Creek to Rich Creek would run up Thacker Creek about one and one half miles, cross Mates Creek, Pigeon Creek, the dividing ridge between Sandy and Guyandotte Rivers and cross Island Creek and Rich Creek Twice.

Here Mr. Stiles attorney for the defendant Henry C. King moves to strike out all of the testimony of the witness.

RE-EXAMINATION by the contesting defendants.

By Mr. Campbell.

Que What lines did you run in and about the point S on the

map and for what purpose? Ans. I ran the lines of a survey patented to William Estep; some of the lines of a survey patented to R. D. Coleman and 127 acre survey patented to Uriah Estep and one line of a survey known as the Lonhart survey.

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Que. Did the two poplar stumps an dthe point where the sugar tree stood prove to be a corner or call of either of those surveys?

Ans. They did not.

Que. The point S was on the inside of what survey? Ans. Of the Coleman.

Que. Is there any other survey there that calls for this corner except the King survey? Ans. There is not to my knowledge.

Que. Do the Coleman, Lonhart and Estep surveys cover all of the ground in and near this corner? Ans. They do.

Que. Are you acquainted with the large surveys—one known as the Walcot 100,000 acres; the Benjamine Hascel 300,000 acres; the Smith *abd* Banks 200,000 acre survey, and do you know whether they each call for the three poplars and sugar tree at S by a small branch of Knox Creek?

Question objected to as incompetent, by the defendant Henry C. King.

Ans. I do not I dont remember of ever seeing a copy of the surveys.

Que. Is there any bottom below the mouth of Island Creek a bottom of Guyandotte River? Ans. There is no bottom twenty poles below the mouth of Island Creek.

Que. What is the character of the ground below the mouth of Island Creek?

Ans. With the exception of the public road it is very steep from the top of the mountain to the River down to about 160 poles below the mouth of Island Creek then there is a large bottom.

Que. In your opinion and from your knowledge of the country where the streams in Taylor's map sketched in from mere general observation or laid down from meandering of the same?

Objected to as incompetent, by the defendant King, for the reason that the witness can know no more about that than the court.

Ans. I am of the opinion that they were only sketched in.

Here the defendant Henry C. King moves to strike out all of the re-direct evidence of the witness as incompetent and not re-direct evidence.

And further this deponent saith not.

Signed G. S. STONE.

Witness claims 5 days attendance and no miles.

W. D. SELL a witness introduced in behalf of the contesting defendants, for the purpose of cross examination, after being first duly sworn upon oath testified as follows:

EXAMINED
By Mr. Campbell.

Que. Are you the same W. D. Sell who gave his deposition at Oceana, at Wyoming County, West Virginia on the 10th. day of September 1897, before D. A. Robinson, commissioner, in this cause?

Ans. I am.

Que. Did you ever run on the ground the line from ZZ on the map at the mouth of Gilberts Creek, North 10 east with variation to MO. on the map if so state when and for whom?

Ans. I did. During the month of August 1895 at the instance of various parties, defendants in the case of King vs. Altizer and others pending in the Circuit Court of the United States for the District of West Virginia, I being one of the official surveyors named in the order of survey made in said case. I ran the line with a variation of four degrees making the course north fourteen east.

Que. Describe the line? Ans. Said line began at a point in the bottom below the mouth of Gilberts Creek shown me by Doc and Wes Stafford at Pat Spratt the line ran down the

general direction of Guyandotte River, crossing the same seven times—the later time a short distance below the mouth of Elk Creek then crossing Peter Huffs Creek both forks of

page 58.] Buffalo Creek and terminating at a point on the head of Rum Creek a distance of 4459 poles from Gilberts Creek.

Que. Did you run or plat the line from MO to MM?

Ans. That line was platted by me.

Que. Do you recognize that map filed with the depositions of Mr. Stone in this cause? Ans. It is a copy of a map which I made for Mr. Shepard in December 1898 and was made from the original from which various trial maps were made in the Henry C. King cases in the United States Court. I note a slight discrepince from my map of the Race Fork of Knox Creek and the point S in this map did not appear on my map.

Foregoing questions and answers are objected to by the defendant King as the same are not Cross Examination; it appearing that the map in question was made subsequent to the previous examination of this witness.

Que. What lines are shown on this map did you run on the ground?

Ans. A-P, P-H, hH-I, I-J, J-M, M-A, ZZ-MO. I also meander lines from which I laid down the following lines: EX-DX, DX-CX, CX-A, KX-P. I also ran meander lines by which the following streams were laid down: Guyandotte River from Little Huff Creek to the mouth of Harts Creek, Harts Creek and the Smoke House Fork of the same, Crawleys Creek Island Creek and the Mud Fork of the same, Gilberts Creek from the crossing of the line from Turkey Creek to the mouth and Horse Pen Fork to and including Browning Fork of the same, Beech Creek, Knox Creek with Paw-Paw and Lester Forks of the same and Turkey Creek.

Que. From what source did you get the data and at whose instance to enable you to lay down on the map Tug River and its branches?

Ans. I got that at the instance of the agent of Henry C.

King from the work of the Norfolk & Western Rail-road survey.; the other streams that I have not named were laid down from the map of the United States Geological Survey.

Que. Upon what information did you lay down the John Green 84,000; McCleray 100,000; Dewit Clinton 142,000; David Booth 20,000 and the John W. Kettera 180,000; John Green 30,000; Morris 320,000 and lines of the Morris 480,000 and the Moore 32,955-1/2 acre and the Benoist 58,000?

Ans. The time is so long since I first constructed the map that I speak from recollection only. The Benoist, McCleary, Dewit Clinton, John Green 84,000 and 30,000, the Morris 320,000 I believe were laid down at the instance of the agent and attorney for Henry C. King, from copies of the respective patents. The Morris 480,000 by the courses and distance shown in dotted red lines on the map. The Booth, the Kettera, the Moore were laid down at the instance of attorneys representing in various King cases as was also the Cloyd and Smith and Fougerara and Baugh.

Que. Are you sufficiently familiar with the country embraced in these different surveys to enable you to say whether or not they are correctly laid on the map and embracing substantially the territory as shown, excepting cases where two theories of the same survey are shown—one by course and distance and the other as controlled by monuments?

Question objected to by the defendant King as incompetent and immaterial. The question of the location of the said surveys, if in any way material, is to be determined by their calls and description, their lines and monuments as they *exits* or existed in fact to be established by evidence as to each element which is a matter to be ascertained by the court from all the evidence bearing on the questions.

Ans. With the exceptions mentioned in the question the several patents are correctly laid down and embrace the territory shown on the map, as to the exceptions I simply dont know.

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Que. Which of the surveys so laid down on said

map purport to have been made by James Taylor Deputy. Surveyor of Wythe County, Virginia.

Ans. The Morris 480,000, and 320,000 and 500,000 and the Kettera 180,000.

Que. Where does the Gordon Cloyd survey lie?

Objected to by the defendant King as it is *immeterial* because being a junior survey and not *amade* by the same surveyor as the one who reported the 500,000 acre tract its location is immaterial, and the question is incompetent as not being one for the witness but one for the court to be determined from the description therein and a survey of the ground.

Ans. The Gordon Cloyd tract is now held by parties living on the same on the west side of the line ZZ-TX south of Huffs Creek and between said line and Guyandotte River.

The contesting defendants file with the commissioner as evidence certified copies of the following surveys and plats shown on the map. John W. Kettera 180,000 acre and the David Booth 20,000 acre.

To the introduction of which the defendant King by his counsel objects because it does not appear that any grant was ever issued upon either of said surveys and because said David Booth Survey was not made by the same surveyor that reported survey of the 500,000 acres claimed by said defendants and because the said surveys are other wise incompetent and immaterial.

Que. What surveys purported to have been made by James Taylor have you surveyed upon since you gave your testimony in this case since 1897 and what experience have you had examining the surveys done by James Taylor and his method of locating surveys?

Ans. I dont remember that I have done any other lines of James Taylor's work since that date but I directed that certain running be done on various lines of the eastern 500,000, 300,000, the Patterson 150,000 acres Que. Was it done as directed and did you obtain the benefit of the information thus de-

veloped? Ans. It was and I was familiar with the result and the work that was done.

Que. State from such knowledge and experience what James Taylor's method was of locating surveys?

Objected to by the defendant King as incompetent, as he could at best but arrive at a belief or conjecture, he not having been in company with James Taylor, and as immaterial because what may have been his method of locating other surveys cannot effect the legal location of the 500,000 acre tract in controversy.

Ans. In the survey that I made of the Indian Ridge which lies on the map close along the line, A-CX-DX-EX, I found that the distances as given by James Taylor while falling considerably short between the actual corners on the ground, when measured with the meanders of the ridge in a round about way following the top of the same, agreed very closely. And that the course as given by him seemed to be the course as one would guess it to be at the point he left the corner. The work that I mentioned as having directed to be done was to determine whether this would prove to be the case with other of his line. This view was found to be correct. For example I found that at CX James Taylor gave the course as south fifty east. Now at the point CX I found that one would guess from what he could see of the ridge that it was north fifty east, but after leaving such point of observation that the ridge made such turns and bends that the true course from corner to corner is about north eighty east.

Que. What was your experience on the other surveys that you directed in respect to course and distance?

Ans. We found that the theory as set forth in the *preceeding* answer is correct except in one instance when we could not account in any way for Taylors distance but the courses given by him followed the theory.

page 60.] The defendant King moves to strike out the preceding question and answer.

Que. What is your experience with James Taylor's work *de-*

relope on the question of the marking of certain timber as called for at corners when he specifies the kinds and locations.

Objected to by defendant King as incompetent and immaterial as the corner trees to the Morris 500000 acre grant are to be proven and established, if at all, by direct evidence and not by the conclusion of any person as to the theory or practice of James Taylor upon other surveys.

Ans. In the investigation as to the location of James Taylor's corners of tracts lying east of the western 500000 acres, it appeared that the timber called for by him was always marked as corners and that the corners were usually either in or in close proximity to some road, trail or passage way for travel.

Que. When you would find one of his corners still standing how would the locality of it agree with the description of that locality given by Taylor in his survey?

Objected to by defendant King as immaterial except so far as it applied to corner trees of the 500000 acre grant actually found by the witness.

Ans. At the time I done the surveying I only knew of three standing corners at, A, CX and DX; the actual location of these trees agreed to that given by Taylor. As to the other points that I have referred to as corners that I am speaking from statements made to me and in my presence by various parties who claimed to have seen the trees marked when standing. These points agree with James Taylor's description as to their location of the ground. I refer to EX, FX, TX and points not shown on this map being corners of the eastern 500000 acres and possibly several points on the 300000 acre tract.

Que. What is the difference in the bearing and the lines as called for and found on the ground and also the distance between the corners found on Indian Ridge.

Objected to by defendant King as those corners are not in controversy and the and any difference there may be cannot effect the location of the grant question.

Ans. The line from CX to DX is given by Taylor as north fifty east 3940 poles allowing the variation this would be north fifty-

four east; I found actual course and distance to be north eighty-two degrees and fifteen minutes east 2490 poles a difference of twenty-eight degrees and fifteen minutes and 1450 poles. The line from DX to EX I found to differ one and a half degrees and the length to fall short 1500 poles being only one-half the distance as given by Taylor. It is my recollection that the line A to CX about seven degrees and his 180 poles.

Que. I will ask you by morning to begin at EX on the map and lay down the line from there—that is EX, DX, CX and A by course and distances as given in the survey of James Taylor.

To which counsel for the defendant King objects for the reasons that platting down those lines will not move the corner A nor change the location of the line A-P which is not in controversy.

Que. How far did you find it from the beginning corner of the 500000 acres to Tug River?

Ans. About four miles.

Que. How far above little War Creek? Ans. About one-fourth of a mile.

Que. How far from the beginning corner to Panther Creek?

Ans. About seven miles.

Que. What did you make the length of that first line? Ans. fourteen miles that was by horizontal measurement.

page 61 | Que. How much short was that line as found on the ground as compared with the calls in the patent?

Ans. About seven miles short.

Que. The description of that line in the 320,000 acres from the four white oaks on the south west bank of Knox Creek near the mouth of a small branch, thence N. 33 E. 21 miles, crossing Panther Creek at eleven and one-half miles and crossing main and Sandy Creeks at fifteen miles where Little War Creek enters into the same on the north east side and up the said War Creek to the fork thereof and up the north-east fork to the head and along a ridge and crossing the same to two popiars and two chestnut trees on a branch of Guyandotte River, six miles from the mouth of Little War Creek", does that line cross Panther at eleven and one-half miles?

Ans. No it crosses it running in that direction at about seven miles.

Que. If Panther Creek was eleven and one-half miles from the four *whites* oaks corner would it about put Panther Creek on the north-east side of Tug River? Ans. Yes, it would.

Que. If the line AP was extended twenty-one miles would that carry it over the *divcide* between Tug Fork and Levisa Fork and place it in the water shed of the latter fork? Ans. It would.

Que. Did you find any timber that was called for at H?

Ans. I did not.

Que. Did the description of that location correspond to the description given by Taylor to the location of the south-west corner?

Ans. No.

Que. Is any part of the line from H to Tug River within the water shed of Knox Creek? Ans. I did not run that line but feel sure I know the territory sufficiently well to say that it was not.

Que. What is the distance from H to Tug River? Ans. Fourteen miles.

Que. Is it your opinion that James Taylor ran the line from P to H, H to I, I to J, J to M and M to A? Ans. No sir.

Que. Did you measure or merely estimate the distance from A to P as you think one would have travelled between those two points in 1794?

Objected to by defendant King as immaterial what the distance would be the way one would have travelled at that time if it were possible to know, as there is no such call in the survey or grant.

Ans. I did not measure such distance. I have been over the ground along the road from A to the mouth of Little War Creek and the distance is about six miles. The distance from mouth of Little War Creek to Panther Creek along the road will differ but very slightly from that given along the line—that is three miles. As to the distance from Panther Creek to the corner of P I have been over part of the ground which a man would take using the creek as the route between those two points and therefore my figures are only guess work as to that distance but it would be

very close to fourteen miles; I mean up Panther Creek *acros* the ridge and down Knox Creek about one mile and a half to the corner.

Que. In the light of your experience of James Taylor's work in locating surveys would you expect to find the corners at the end of course and distances or would you rather search for it at the locality described for it?

Objected to by the defendant King as incompetent and immaterial, what the witness might do in the premises would not effect the actual location of any corner.

Ans. I would not expect to begin at a known corner of any of Taylor's work and run the course and distance and find the corner at the end of such line. It would be more apt to stand in the locality described by Taylor if such locality could be found.

Que. The south-west corner of the 500000 acre survey is described as three polars and a sugar tree by a small branch of Knox Creek and the next line is described thence N. 8000 poles, crossing Knox Creek at about four miles, Sandy River at Twelve miles at the mouth of Turkey Creek and up the said creek and
page 62.] the north-west fork of the same crossing Buffalo creek Pigeon creek and the dividing ridge between Sandy and Guyandotte Rivers and Gilbert's Creek Twice, a branch of Guyandotte to three Sugar trees in a bottom of said river and about twenty poles below the mouth of Gilbert's Creek. Now taking in view the fact that the line from S to ZZ does cross Knox creek at three and nine-tenths miles. Tug River at Twelve and one-half miles and passing *withing* two hundred and twenty-nine feet of the mouth of Turkey Creek and crossing the head fork of Turkey Creek which points north-west, two forks of Ben Creek and Gilbert's Creek twice and ends in a bottom of Guyandottē River at the mouth of Gilberts Creek, what would you say on the question whether James Taylor was at some point on Knox Creek and made a corner and was likewise at Gilberts Creek on the Guyandotte River and there made another corner?

Objected to as incompetent, immaterial and wholly *inadmissable whatever* might be the opinion of the witness as the matter it

could in no way affect what may be the fact in the case nor tend to establish it. The questions calls for mere speculation and conjecture of the witness.

Ans. The facts that are given in the question I do not think would be sufficient to lead me to conclude that Taylor had been at and marked corners at the respective points.

Que. Do you believe that Taylor was upon this survey of 500,000 and marked corners at the south-west and the Gilberts Creek corner.

Objected to by the defendant King as incompetent and immaterial. His belief if based upon sufficient grounds would not be proof of the facts sought to be established by the questions and answer, which if established at all must be by the court upon competent evidence of corners trees actually found and not by the belief of any other person.

Que. Yes sir I think he was on the ground and marked two corners at one of the southwest corner of the 5000000 acres and one at the end of the course which he gives as north 8000 poles.

Que. Do you believe that that corner would be found at the end of north 8000 poles?

Objected to by the defendant King for the reasons above given.

Ans. No indeed.

Que. Now on what do you base your opinion that the south-west corner was marked by James Taylor the Surveyor and the corner which he described as at the mouth of Gilberts Creek?

Objected to by the defendant King upon the ground that a statement of the belief itself being incompetent and immaterial the grounds of such belief are incompetent and immaterial.

Ans. I have already answered the question in the foregoing part of this examination when I stated that other corners of surveys made by James Taylor had been found or located and that I had come to the conclusion that he didn't call for corners unless he made them.

Que. What would his call from the Gilberts Creek corner of north ten east indicate to you, as to whether that line was run on the ground or not?

Ans. It would indicate to me that it was not run on the ground but to stop on the line of some other surveys.

Que. Would you expect to find what is called the Gilberts Creek Corner anywhere, except at some point on the Guyandotte River?

Objected to by defendant King as immaterial as what he might expect would not control the finding of the corner if it existed.

Ans. No sir if I were looking for that corner I would expect to find it on the south bank of Guyandotte River in a bottom below the mouth of some creek.

Que. Then it is a question in your mind as to what creek James Taylor called Gilberts Creek, is it not?

Objected to by the defendant King as immaterial.

page 63.] Ans. Not so much a question as that I simply don't know.

Que. If you were convinced that what is called Gilberts Creek on the map is the same creek James Taylor mentioned in the survey would you, even in the absence of the three sugar trees at this day locate the corner at that point?

Objected to as incompetent being an attempt to substitute the witness for the court and it is not the province of the witness to locate the corner and it is immaterial what he might do in the premises. The location of the corner in such case as the true corner of the grant is dependent upon many other things besides the identity of the creek or the existence of the actually marked trees at that place, which are not embraced in the question and which are largely matters of law as well as of fact.

Que. If I know that to be the Gilbert Creek James Taylor mentioned in his description of the corner I would not let the absence of the trees at this time prevent me from locating the corner at the mouth of same.

Que. Please read question No. 5 and the answer thereto found on page 344 and 345 of the printed record in this case and say whether or not you have changed your mind since that time growing out of more experience and knowledge of James Taylors work?

Ans. I have read the question and answer and state that since that time my opinion as expressed therein has been somewhat modi-

fied. The statements made therein were broader than I now would make. At the same time it is still my opinion that Taylor ran no line from P to S or H nor from A to M although I think he marked corners at places which are attempted to be located at S or H and M or MM. The further statement is made that at the time of taking this evidence witness fully expected to be cross examined in full by the attorneys for the various parties having adverse interests to H. C. King.

Que. Why did you run the line P to H and to I and to J and to M?

Ans. *They* work was done under an order of survey which directed me to do such work as either party might require. The running of the lines in this manner was directed by the agent and attorney of Henry C. King.

Que. You found no corner trees nor ground meeting the description of the patent or surveys neither at H, I, J, nor M, did you?

Ans. I did not.

CROSS EXAMINATION.

By Mr. Stiles, Attorney for the defendant, Henry C. King.

Here the contesting defendants object to the examination of the witness by H. C. King being called or designated as "cross examination" the witness *hiraing* been heretofore called and examined by defendant King, to prove two things first that the tract of land in question was platted and second the quantity of land in side of said tract that was liable to sale or redemption.

Que. You do not mean that the answer given to question No. 5 above mentioned was given with the expectation that your opinion would be changed by cross examination do you?

Ans. I do not.

Que. Have you done since that time any surveying of any lines being or purporting to be lines of the 500000 acre grant or made any exploration of the land embrace therein with a view to determining the location of any line or corner thereof? Or has the experience by which you say your judgment has been effected been

entirely in connection with other tracts lying far to the eastward?

Ans. I have done no work on this tract since that
page 64.] time; the new matter that I have picked up has been with reference to Taylor's work on surveys to the east of this.

Que. Have not all or very many of the corners that you speak of east or south east of the five chestnut corner at EX been in contention and dispute as to their location and are they not in still in contest.

Ans. Yes.

Que. The opinion you have as to the running of his lines by Taylor and his manner of locating corners is largely dependent is it not, upon one contention or the other, as to the location of such corners being the correct one.

Ans. To a certain extent it is as the contesting party simply ignores all corners except his beginning corner.

Que. The line PA is a line of 320000 acre tract called to run from *from* P towards A or from Knox Creek towards Sandy River. The preceding line comes down Knox Creek about four miles to the four white oaks from which the call is north thirty-three degrees east twenty-one miles crossing Panther Creek at eleven and one-half miles and main Sandy Creek at fifteen miles and so *fourth*, is there any thing in that call to warrant the supposition that the surveyor instead of going on the *the* course given turned back up Knox Creek two miles to the head of Panther Creek and then down the creek which he says he crossed?

Ans. There is not neither is there anything in any other of James Taylors course and distances that would lead one to infer that he should go in a round about way between the corners in order to get the distances given by Taylor.

Que. Does not Taylor in the lines along Indian Ridge mention the ridge and call for running along the same?

Ans. The description of Taylors line along the Indian Ridge conveys the *impresion* to my mind that he was *endevoring* to make his report so read as if he ran a direct line between the points.

Que. It is true nevertheless that he calls for running along the ridge along which you believe he ran, is it not?

Ans. He does but adds other descriptions which would make it appear that he had not continued along the top of the same for the whole distance.

Que. How much do you find the course of the line PA to vary from the patent call?

Ans. About one degree.

Que. If the surveyor instead of running the course given from the point P had pursued an irregular course up Knox Creek and down Panther Creek would it not have required very careful and *acurate* surveying to pick up the line and continue on to War Creek and the Muzzle corner with an error of less than one degree in his course?

Ans. It would.

Que. Do you know of any road running from where the line crosses Panther Creek to Tug River that was in operation a cen*tuary* ago?

Ans. Of course not. But there is one there now,—a track I mean.

Que. Considering the difference between surface and horizontal measurement is there any glaring *discreptence* between the actual distance from Panther Creek to the Muzzle corner and the distance given by Taylor, assuming that he used surface measurements?

Ans. There is a good discrepancy because the difference in surface measurement on that line and the distance given by Taylor is about seven thousand feet.

Que. The great gain in the distance given on that line over the actual distance is between Knox Creek and Panther is it not?

Ans. It is.

page 65] It is ordered that these proceedings be now adjourned until to-morrow morning at 8 o'clock at the same place.

J. T. Graham,

Commissioner.

Tuesday May 13th, 1902. Met pursuant to adjournment on yesterday: Present the same parties as on yesterday.

And thereupon Mr. Stiles resumed the cross examination of the witness W. D. Sell, as follows:

Que. The line ACX runs up across the side of the country not following the course of any ridge or stream, does it not? Ans. The line starting from A runs up a branch and through the head of several others to the corner of CX on the ridge.

Que. The call for the corner A locates it "On a branch of Guyandotte River" and the next call is "thence south 25 east 2-¾ of a mile crossing said branch to a lynn and three chestnuts and so *fourth*, does that line cross Muzzle Creek as called for?

Ans. It does.

Que. How far up the branch does it run? Ans. I ran the line from CX to A and therefore could not tell just how the line would run from A as I missed the corner at A some distance to the left. I know that it runs up the branch for a short distance at least as I set on the course at A and looked back.

Que. In running the line from A to Guyandotte River and thence to M did you encounter any Laurel Creek? Ans. I did not.

Que. Taylor in his description of the western line of the 480000 acre tract viz. the line north 6800 poles *poles* from A calls for crossing Laurel Creek after leaving the corner, and before *mentiong* Huff or Cain's Creek and on his map *accompaning* said survey shows a Laurel Creek as heading near the line represented by CX—DX on the map filed by Stone and flowing north west across the line north 6900 poles between the Muzzle corner and Huff or Cains Creek, is there any such creek in that country? Ans. There is no creek by that name but Little Huff Creek, which is shown on the map, lying relatively in the position of Taylor's Laurel Creek. I mean by this that Little Huffs Creek as shown on Stone's map and Laurel Creek on Taylor's map have the same relative positions with respect to the line.

Que. If Little Huff Creek were Taylor's Laurel Creek Muzzle

Creek upon which Taylor's corner at A is found would properly be described as a branch of Laurel Creek would it not?

Ans. Yes strictly so but equally a branch of Guyandotte River as surveyors very frequently refer small branches to the largest water course in the section.

Que. Taylor describes the line north from A as crossing Huffs or Cain Creek and on his map represents Huffs or Cain Creek as heading much further east than his Laurel Creek and flowing north west across the line much farther north than he represents Laurel Creek; if Little Huff Creek as it exists in fact be taken to represent Taylor's Laurel Creek is there any creek south of Guyandotte River that would represent or take the place of Taylor's Huffs or Cain Creek?

Ans. There is not.

Que. So that either his Laurel Creek or his Huff or Cains Creek is missing from the face of nature? Ans. It is.

Que. I think you said it was your opinion from your examination of the country and the work you have done as a surveyor that Taylor never ran the line called for as north 6800 poles from A or any line as the western line of the 480000 acre tract?

page 66.]

Ans. I did.

Que. And also that he did not run the line P S or any line west from P.

Ans. I did.

Que. You stated that you would rather expect to find corner trees called for by Taylor in the locality he describes than at the end of his course and distance. The only locality that he describes for north- west corner of the 480000 acre tract, which corresponds with the north-east corner of the 500000 acre tract—the only local description he gives of the corner trees, is "By a small branch of Guyandotte River", now if you disregard, or strike out from his description of the line the mention of course and distance from the Muzzle corner would not the local description "by a small branch of Knox Creek", be met by any one of a practically infinite num-

ber of places or localities in the valley of Guyandotte River?

Ans. It would.

Que. The local description of the trees mentioned by Taylor as at the terminus of the second line of the 500000 acre tract—west 3840 poles and as the south-west corner of that tract is "by a small branch of Knox Creek"; is not the local description by "a small branch of Knok Creek" answered by any one of a vast number of places or localities in Knox Creek basin?

Ans. It is if the course and distance be disregarded.

Que. Have you never known of an instance of a surveyor calling at random for tree or trees at the end of, or on a line without actually running the line to them or going to them and marking them?

Ans. I have heard of this being done by surveyors within recent years.

Que. When Taylor calls to run north from two poplars and two chestnut trees, on a branch of Guyandotte River, which you find at point A on the map, crossing Laurel Creek and some of the branches thereof, the divding ridge between the same and Huffs or Cain creek, you understand him to say, do you not, that he did cross such creek branches and dividing ridge and that they exist in fact and without going over the line yourself or examining the country you would assume his statement to be true would you not?

Ans. Yes sir.

Que. In Taylor's surveys that you have run or examined where you found his lines running with a water course and that in making the survey he had actually followed such water course himself does he not call for running with such water course, or represent it on his map?

Ans. No sir he does not.

Que. Does he not however, refer in his call to the water course or so represent it on his map as to indicate that his line runs along or in the immediate neighborhood of such water course, or show that such water course runs in the neighborhood of his line?

Ans. Yes sir.

Que. You expressed the opinion that the line called for by Taylor as north ten east was not run because he calls for pointers; now if we assume that that line is from ZZ to MO would not the fact that such a line from ZZ—the mouth of the creek now known as Gilberts Creek will cross Guyandotte River seven times when there is no such call in the survey, further lead you to the opinion that no such line was run from that point?

Ans. It would

Que. Have you ever run the line EX to DX3, CX3, A3 or any part of them

Ans. I have not.

Here the defendant King moves to strike out said lines and exclude them from consideration.

Que. What lines of the 320000 acre tract, as laid down on the map before you, did you not run?

Ans. The lines KX-LK, LX-EX.

Que. Are they laid down by the patent calls? Ans. No they were modified by the shortening of the other lines that I did run.

page 67.] Que. Do they preserve the course given in the patent?

Ans. I *dont* think it does.

Here the defendant King moves to strike out from consideration the two lines last referred to.

Que. Have you surveyed the lines running north-west from UU to Guyandotte River, thence to 9 thence to CC thence south to MX, or any of them?

Ans. I have not.

Que. Do you know anything of corners at the points indicated—corner trees? Ans. No sir.

Que. Is the same true of the tract embraced in the Green Lines marked Moore 32955-1/2 "A"

Ans. Yes, except that I have heard of the corner standing at 2 of said tract but I have never seen that tree.

Here the defendant King moves to exclude the said lines from

consideration and strike out said surveys as also the Gordon Cyoyd from the evidence.

RE-CROSS EXAMINED

By the contesting defendants.

Que. Please lay down on the map a line from M. west with four degree variation 6620 poles

Ans. I have laid down such a line of the Stone map which is designated as M-J2

Que. Now plat a line on the same may south ten degrees west 4450 poles from point J2?

Ans. I have put down such line on the Stone map and the same is designated J2- I-.2

And further this deponent saith not.

W. D. SELL.

Witness proves 2 days attendance an 312 miles travel

FREDRICK TRENT a witness introduced in behalf of the same contesting defendants, after being duly sworn upon oath testified as follows:

Que. How old are you and where do you live?

Ans. I will be 87 years of age the 25th. of next September. I live in Wyoming County, about four miles from Baileysville.

Que. Did you ever live on Gilberts Creek?

Ans. Yes sir.

Que. How many years ago and how long, did you live there?

Ans. I *couldent* answer that point blank.

Que. About how old were you when you moved to Gilberts Creek?

Ans. I married when I was twenty two and moved off and lived there about two years. I am just guessing at this the best I can.

Que. Where did you live before you were married?

Ans. I lived on the Horse-Pen.

Que. What is Horse Pen Creek fork a tributary of?

Que. What was the *appearence* of the marks on the trees as to their age?

Ans. They was old marks.

page 69.] Que. Did Isaac Spratt own or claim the land at the mouth of Gilbert Creek at that time?

Objected to by the defendant King as being immaterial and incompetent as it is not the way to prove the ownership of land.

Ans. Yes sir.

Que. About what aged man was he then?

Ans. He was sixty I reckon, maybe more—he was an old man I believe he was more than that.

Que. Were you ever shown this sugar tree corner by Isaac Spratt?

Objected to by the defendant King as leading and suggestive and as immaterial.

Ans. *O*, Yes the old man used to show it to us boys when we would be down there fishing and swimming.

Que. What did he tell you it was if anything?

Objected to by the defendant King as incompetent as being hear say and also as leading and suggestive.

Ans. He just told us that *is* was a corner of a survey or a big survey but I wont answer which he told me what survey it was but I cant state but I believe I could but I *aint* a going to, as I might state it wrong and then the Old Master might get after me.

CROSS EXAMINATION

By Mr. Stiles, Attorney for H. C. King.

Que. When you first saw these two sugar trees how far did they stand from the bank of Gilbert Creek or its mouth?

Ans. I cant answer just right but they stood pretty *tolerble* near the bank. A fence ran along on top of the bank of the creek and it would just about work it to be on the bank of the creek, it was down at the mouth of the creek. Where the trees stood I think is all gone—the land I mean. I cannot state whether the trees were inside or out side of the fence.

Que. Did they stand close to the fence?

Ans. Yes they stood close but whether inside or out I cant say.

Que. How far did they stand from the bank of the river?

Ans. I dont recollect but they might have stood sixty or seventy yards and they might not have stood that far. When the bank of the river broke off the place broke off and the trees with it. The trees are gone.

Que. They were right close to the mouth of the creek were they?

Ans. Yes they were close by somewheres I cant state exactly sixty or seventy yards.

Que. Was the bottom at Gilberts Creek cleared and fenced when you first remember seeing it?

Ans. Yes sir.

Que. Was all the flat land cleared at the lower end of the bottom?

Ans. As well as I recollect it was.

Que. About how far were these trees from Isaac Spratt's house?

Ans. Well I *couldent* answer it just right but I will say it anyhow—I will say about one hundred yards.

Qu. Was his house on the east side of Gilbert Creek—up the river from its mouth?

Ans. Yes.

Que. Facing the river?

Ans. Yes sir.

Que. There were sugar trees all around that neighborhood were there not, where the land was not cleared?

Ans. Yes there were sugar trees all around but whether there were any other sugar trees than them I seen corners I *aint* going to answer—I cant answer, in all *probably* there was outside of the fence down to the lower end.

Que. Was the bottom at the lower side of Gilbert Creek cleared back to the foot of the hill down towards the

page 70.] river?

Ans. Yes it was cleared there might have been

a little bit at the lower end when I first saw the field but my recollection is that it was all cleared.

Que. Do you remember whther anyone had a sugar orchard or tapped any sugar trees in that neighborhood?

Ans. Not there there might have been though but I dont recollect it.

Que. Dont you remember that old Mrs. Spratt used to make sugar there?

Ans. No sir she might have made it but I dont recollect it if she did.

Que. You could not tell but that these marks you have spoken of on the two sugar trees were made within a year or two of the time you first saw them could you?

Ans. No sir I think they were made before a year or two I am pretty confident they was; they was old marks.

Que. What examination of them did you ever make?

Ans. I *couldent* tell you just me and the boys would go there and have a big laugh about our land and say it was our corners and their corners. They would claim it and I claim it. If Tom Cline and Jim Hatfield were here they would state point blank what I have said but they are dead.

Que. Were the marks very distinct, could you see the cut of the ax clearly?

Ans. Oh, yes the marks was plain but they looked old.

Que. About how old were you then did you say?

Ans. I would have been thirteen, fourteen fifteen and maybe sixteen my father died when I was twelve years old we lived at the forks of Ben then, a year after that we moved to Horse Pen.

Que. You could find sugar trees along all the creeks up and down Guyandotte River, in those days, could you not, where the land was not cleared?

Ans. I *dident* notice about such things.

Que. What I mean is that sugar trees grow along the creeks in that locality?

Ans. Well I expect they did but I have no recollection of seeing them I know that if you had went up Gilbert you would have found plenty of them.

Que. You will also find bottoms along the river about the mouths of the creeks along Guyandotte River, will you not?

Ans. I think you will.

Que. You remember testifying about this matter at Abbingdon Virginia, you then stated the distance of those trees from the creek bank to be about thirty or forty steps, is that distance about correct?

Ans. That would be about correct if the river *hadent* took it all off but the river took it all off—the river and creek together took it off I *couldent* tell you exactly how many feet it was.

Que. I mean their distance at the time you first saw them?

Ans. Well I expect it was about that.

RE-DIRECT EXAMINATION

By Mr. Shepperd.

Que. You have stated above that the bank broke off and the trees went with it, do you know in fact what did go with the trees?

Ans. No sir only just what I have heard said and I cant see them any more as they are not there.

Que. What do you understand did go with the trees?

Objected by the defendant King as immaterial and incompetent. He has stated that he does not know and what he may understand about it is not proper evidence.

Ans. Doc Stafford told me he dug up the stumps.

RECROSS EXAMINED.

Que. How large were the two sugar trees you speak of?

Ans. I would guess something a little more or a little less than twelve or fourteen in *diamater*.

And further this deponent *saith* not.

his
FREDERICK X TRENT.
mark.

Witness mark,
John T. Graham.

Witness proves 2 days and 110 miles.

page 71.] R. P. SPRATT a witness introduced in behalf of the contesting defendants after being first duly sworn upon oath says.

EXAMINED
By Mr. Shepard.

Que. State your age and residence?

Ans. My age will be 68 years in July; I live on Guyandotte River in this county about three miles below the mouth of Gilberts Creek.

Que. How long have you lived in the vicinity of the mouth of Gilberts Creek

Ans. I have lived in the bounds of that principally all my *life*.

Que. Where did you spend your *boy hood* days?

Ans. At the mouth of Gilberts Creek.

Que. With whom did you live at the mouth of Gilberts Creek?

Ans. Isaac Spratt.

Que. Was he related to you in any way?

Ans. He was my grand father.

Que. Is he living or dead?

Ans. He is dead

Que. About when did he die?

Ans. I think it *wasent* far from the War—about the War.

Que. About what aged man was he when you can first remember him?

Ans. Well he was an old like man then and he had grandchildren I know that.

Que. Where did his house stand with reference to Gilbert Creek

Ans. Well it stood back covering part of the ground where David Trents house stands now. It was on the upper side of the creek.

Que. Do you know anything of three sugar trees having

stood in a bottom below the mouth of Gilberts Creek about twenty poles.

Ans. I can recollect the stumps of the so called corners of a big survey.

The defendant King moved to strike out of the answer the word "of the so called corners of a big survey" volunteered by the witness as incompetent.

Que. How many stumps were there and what kind were they?

Ans. Three sugar tree stumps.

Que. Where did they stand?

Ans. In the lower end of the bottom there below Gilberts Creek

Que. Does that bottom front on Guyandotte River?

Ans. Yes sir.

Que. Does Gilbert Creek empty into the river now? where it did at your earliest recollection?

Ans. No sir.

Que. Explain the difference?

Ans. We measured it from where we located the corner and I think it lacked three feet of twenty poles.

Que. What lacked three feet of twenty poles?

Ans. From a sycamore which marks the upper edge of the creek from where it used to empty into Guyandotte River. From that mark to where we located the three sugar trees below was three feet of twenty poles.

Que. Who located the point where the corner trees had stood?

Ans. Well there were several of us there that day and I *dont* remember whether any body else besides Doc Stafford and me took a hand in it or not.

Que. Who did you locate the point for?

Ans. For Sell I believe.

Que. Did you locate the point before or after the *measurment* was taken from the sycamore to the corner?

Ans. Before.

page 73.] Que. State whether or not the tract of land first known to you as the big survey and afterward as the french survey, is the same one now claimed by the defendant Henry C. King?

Ans. Well I guess it is the same land

Que. Were you acquainted with the old men and land owners in the neighborhood of the mouth of Gilberts Creek, and who lived in that *that* neighborhood about the time your grandfather pointed out the sugar tree stumps to you?

Ans. Yes sir I was acquainted with all the old men around there.

Que. Was it a *matter* of common report or not among those old citizens that those three sugar trees was a corner of that big survey of which you speak?

Objected to by the defendant King as incompetent, it being sought to establish a private land corner by general reputation or neighborhood gossip and it does not appear that any reputation existed with reference to the trees, and the question is leading.

Ans. That was the general report among all the old men of that *neighborhod*

CROSS EXAMINATION

By Mr. Stiles attorney for the defendant Henry C. King.

Que. What occasioned that report—the coming of the frenchman?

Ans. Yes sir I suppose that was what created the talk.

Que. How old were you when you first had your attention called to those stumps?

Ans. I *couldent* state that exactly but not far from twelve years old or thirteen or along there.

Que. Was that the time that your grand father Spratt pointed them out to you?

Ans. Yes sir it was about that time—not far from that time.

Que. Do you have any recollection of the stumps prior to his pointing them out to you?

Ans. I *dont* recollect that—I mean that was the time he pointed them out to me and told me that they were corners of the big survey. I might have seen them hundred of times before that but *dont* recollect it now.

Que. Did he say that he owned or claimed any interest in that big survey?

Ans. I *dont* know as he did only the land that he held there and cultivated

Que. Did he say that they were a corner to his land?

Ans. No sir I never heard him say that I *dont* recollect it if I did.

Here the defendant King moves to strike out from the testimony of this witness all reference to any alleged statement of Isaac Spratt with reference to the stumps or trees stated to be sugar trees or sugar tree stumps.

Que. How large were these stumps according to your knowledge or recollection?

Ans. They were tolerably good sized stumps one was a little smaller than the other two. The best recollection that I have of them now they must have been somewhere about between sixteen and eighteen inches across.

Que. Did the stumps look as if the trees had been cut a long time or a short time when you first noticed them?

Ans. I *dont* think they had been cut very many years.

Que. Did they seem sound at the time?

Ans. Just tolerbly—you know the nature of a sugar tree. That when the stumps stands up the pores are open and the water will run in *thsoe* pores and it will rot in a very few years but when it lays down the water cannot run into the pores and it will last for a long time.

page 74.] Que. How long would a sugar tree stump standing in the ground last so as to preserve its character so as to show what kind of wood it is?

Que. Well I *couldent* state exactly how long: it may last three

Ques. How far were these stumps from old man Spratts house as you now remember it?

Ans. It would be twenty- one or twenty-two poles, perhaps maybe not so far or it might be a little further.

Que. How far according to your recollection did the stumps stand from the bank of the creek?

Ans. Well I couldn't tell exactly how many feet but it was a right smart little distance from the stumps to the creek bank.

Que. Was there just about room for a passage way or haul way from the fence to the bank of the creek?

Ans. My recollection there was more room than that; we hauled through there and there was a right smart little space.

Que. Was it a hundred feet?

Ans. No. There was a right smart space from where we turned off to go up the river. The bank of the creek slanted off gradually from the top of the bank and made a haul way.

Que. Was the haul-way or road close to the fence?

Ans. The haul-way come out of the field at the corner near where Gilbert's Creek entered into the river, and crossed Gilbert's creek.

Que. Are you able to give an estimate of the distance in feet from the stumps to the bank of the creek as they stood when you remember them.

Ans. I could not tell exactly the distance it was a right smart piece a right smart steps. When we measured it off it lacked three feet of being twenty poles.

Que. I will ask you if you remember testifying on this subject at Abbingdon Virginia on September 1899 in the case of King vs. Watkins?

Ans. Yes sir.

Que. Were you not then asked by me "Then as you first remember these stumps they stood about twenty-five or thirty feet from the creek bank and a little nearer to the river", and did you not answer "That is my recollection about it as well as I recollect it may not have been not so far or it be a little further"?

Counsel for contesting defendants object to the question because counsel for defendant King quotes the question and answer propounded by him to the witness in a trial at Abbingdon as reported by his private stenographer and because the question and answer so reported is not the question and answer as actually made and answered on that trial.

In reply to which counsel for the defendant King states that he reads the question and answer from the printed transcript of the record and the bill of exceptions agreed to by himself and the counsel for the present contesting defendants and certified by the Clerk of the Court to the United States Cicruit Court of Appeals for the Fourth Circuit; qustion and answer to be found on page 552 of said transcript.

Ans. I cant see that if that be correct how I answered it in that way. I know it was further than that there must be something wrong with it or a mistake some way.

page 77.] Que. Do you remember about how old you were when the frenchmen came there?

Ans. I was somewhere between twelve and sixteen I *cant* state exactly

Que. You had never *had* heard of any particular big surveys before that time had you?

Ans. I heard of that big survey but never knew the name of it until the Frenchmen come and then it was called the *frence* survey..

Ans. Did you know before that time who claimed any big survey in that neighborhood or anything about where it lay?

Ans. No sir not till the French come there. I knew one being claimed but never know the man who claimed it.

Que. You know or heard of old James Hector being in there surveying or pretending to survey the country and claiming lands, did you not?

Ans. No sir I *dont* recollect that ever I did.

Que. Did the Frenchmen that you mentioned succeed in *extablishing* their claim?

Ans. They claimed they *didont*—they left and went back.

Ans. I was born and raised one short half mile below the mouth of Gilberts Creek.

Que. Were you related to Isaac Spratt?

Ans. Yes sir—I am his grand son.

Que. Where did he live when you can first remember him?

Ans. At the mouth of Gilberts Creek.

Que. About what aged man was he at your earliest recollection?

Ans. About from forty-five to fifty I would say. That would be my guess he might have been older.

Que. Do you remember where Gilberts Creek emptied into Guyandotte River at that time?

Ans. Yes.

Que. State where it was with reference to its present mouth?

Ans. It was a great deal higher up; it run in and emptied into the river a great deal higher up the river than it does now.

Que. Did you ever point out the old bed of Gilberts Creek, the location of Isaac Spratts house, the location of the three sugar tree stumps and the sycamore that stands where the creek originally emptied into the river—to surveyors Sell and Janey?

Ans. Yes.

Ques. I now hand you a diagram showing the location objects mentioned in the last question marked R. P. S. and filed with the deposition of R. P. Spratt and I will ask you to state whether or not that diagram is a fair representation of the objects mentioned?

Ans That is as near as I could mark it off myself.

Here the defendant King objects to the reception of the diagram in evidence. It not having been made by the witness nor proven to be accurate.

Que. What surveyors have you pointed out the location of the objects set out in this diagram to?

Ans. Why to Sell and Janey.

Que. Do you know anything of any corner trees—of the

stumps of any corner trees standing near the mouth of Gilberts Creek, in a bottom of Guyandotte River?

Ans. I did.

Que. Were they stumps or trees?

Ans. They were stumps.

Que. How many and what kind of timber were they?

Ans. There was three sugar tree stumps.

Que. Where did they stand?

Ans. They stood just below the mouth of Gilberts Creek.

Que. How far were they below the mouth of Gilberts Creek where the cheek emptied into the river when you can first remember it?

Ans. *Agreeable* to Mr. Sells measurement it lacked three feet of being twenty poles.

Que. How far were those stumps from the river page 79.] bank?

Ans. From twenty to thirty and maybe thirty yards. I will say about thirty yards.

Que. Was the creek bank and river bank at that point changed any, since that time?

Ans. Oh yes considerably.

Que. How have they changed?

Ans. They have throwed up bars and banks give away in places and the creek changed from what it used to be.

Que. Where does the creek empty into the river now with eference to its mouth when you can first remember it?

Ans. Why a great deal below—a good deal below.

Que. Was the bottom cleared when you first remember it?

Ans. Yes sir.

Que. Was there a fence around it?

Ans. Yes sir.

Que. Where does the creek empty into the river now with reference to the fence along the river bank?

Ans. Inside of the field.

legs and they wore these until they were sometimes fifteen years old.

Que. Were you acquainted with the old men living in the neighborhood of Gilberts Creek in your boy-hood days?

Ans. Oh, yes.

Que. What reputation if any existed at that time in that community as to these sugar tree stumps being a corner to a survey?

Objected to by the defendant King as incompetent it being an attempt to establish a private boundary by general reputation of persons not shown to have any ownership or interest in the boundary.

Ans. Why that was the general news that they was a corner of a big survey

Que. Is that big survey the same one you now understand to be claimed by Henry C. King?

Objected to by the defendant King as incompetent and immaterial; it is for the court to determine what was the significance of the stated reputation, if proper to be determined, and the witness understanding about it could not matter.

Ans. Yes sir.

CROSS EXAMINATION

By Mr. Stiles, attorney for King.

Que. Had your grand-father Spratt lived at the mouth of Gilbert Creek considerable time when you first remember him?

Ans. A right smart while.

Que. Was the creek bottom or river bottom cleared at that time and to what extent?

Ans. Well it was cleared when I can first recollect but how long before I cant say; the whole bottom was cleared.

Que. Was it fenced and if so describe where the fence ran?

Ans. Yes sir it was fenced the fence ran up to the foot of the hill at the upper end of the bottom—I mean along the foot of the hill and then came down the creek bank to *the* where the creek turned to the right and the fence ran on straight then to the river. And then ran down the river and joined with the

back fence; there is a vacant place there where the fence turned betwixt the fence and mouth of the creek.

Que. How much vacant land?

Ans. Well there would be about—at the mouth fifteen poles I would judge.

Que. How long do you understand a pole to be?

Ans. Sixteen feet I believe.

Que. Why was not that vacant place enclosed by the fence?

Ans. That I cant say.

Que. What was the character of the surface of the ground?

Ans. Why the ground *look* like it would produce.

Que. Was it cleared off?

Ans. As well as I recollect it was.

Que. Was it smooth or did it over-flow during
page 81.] high water?

Ans. It would over flow some times, the whole river *bootom* over flowed in 1861, or what you would say the whole river bottom.

Que. This patch of ground that you speak of, out side the fence slanted down to the creek did it not? And was the place where the road or haul-way ran through the field.

Ans. The way I understand it it sorter come out this way and slanted up and then turned down to the creek bank. The road out of the field come pretty close out of the lower end of the bottom. It crossed the vacant place and across the creek and up to the barn.

Que. Did the fence run along down the creek bank until the creek turned up the river?

Ans. Yes sir.

Que. And then the fence kept on its course to the river?

Ans. Yes sir.

Que. Was there a gate or bars at the haul way through the fence?

Ans. I think there was bars if I aint mistaken.

Que. Where did the stumps stand with reference to the bars?

Ans. They stood next to the river. Down the road to the right as you went into the bottom.

Q. How far from the bars?

Ans. My recollection is not very far. Would hate to say but it was a very close distance to the bars as my recollection is.

Que. Were they inside or outside of the fence?

Ans. They were inside.

Que. Were they all inside?

Ans. Yes sir.

Que. How far from the fence?

Ans. Just a short distance I dont expect over ten feet.

Que. About how large were these stumps across the top?

Ans. My recollection some of them were tolerable large. I should say that one or two of them were from sixteen to twenty inches in diameter the other not quite so large.

Que. How did you happen to see the old man digging them up?

Ans. Why he generally had me around with him whenever he could get me.

Que. Did he take you with him when he began the work?

Ans. Well I aint *certin* I wont be positive anyhow I just happened along and he called me in.

Que. Did you help dig?

Ans. I helped all I could.

Que. How much was that?

Ans. But little I was so small. I told him I *couldent* help much and he said every little helps.

Que. How long did it take you to grub them up and cover the place over.

Ans. It was a good while. That day and the next day before it was completed.

Que. Did you grub up all of them?

Ans. We grubbed up all three of them and what we *dident* grub up we piled the chunks back and other chunks and burned them.

Que. You say these were a corner of the Cloyd survey?

Ans. Yes of the Cloyd survey and this big survey to, or that is my understanding for I am only going by the voice of the old people and the way I have been taught all my life.

Que. And you say he claimed a part of the Cloyd survey—your grand father?

Ans. Yes sir.

Que. And he had you come out and help him grub up the stumps of his corner and level off the ground and burn the roots?

Ans. Yes sir.

Que. Did these stumps stand in the bushes, alders, or in the shade of them—the alders that grew along the river bank?

Ans. They stood in cleared ground inside of the field.

Que. How old were you when you quit wearing tow linen shirts?

Ans. I guess I was about fifteen or sixteen, before I wore pants in the summer.

Que. When did you first hear anything about a big survey in connection with these stumps?

Ans. I was quite small—just can recollect when page 82.] I first heard *if* this big survey.

Que. How old were you?

Ans. If I aint mistaken I first heard of this big survey *first* about a year or two before the stumps were destroyed—I can just recollect it. Now understand me this was just a rumor about it, there was a great deal of excitement about this survey on up to the war.

Que. Do you remember what was the occasion of your first hearing about it?

Ans. The French was coming over; we got the news a good while—I dont know how many years before they come to the mouth of Gilbert.

Q. Do you remember Dr. Dingess surveying there?

Ans. Yes sir.

Que. When was that?

Ans. I dont know just what year it was. I can recollect him very well and can recollect most of the men that went with him.

Que. Was not that the first you ever heard about the big survey in there at that place?

Ans. No I heard of it way before that.

Que. What did you hear it called?

Ans. I dont know that I can say—the Morris survey I believe.

Que. When did you first hear it called that?

Ans. If I aint mistaken ever since I can recollect until the French came over and after we heard that the French were coming over it went by the name of the French survey.

Que. How did you hear that the French were coming over?

Ans. There was a Frenchman come through this country, I won't say whether he was an agent or an attorney or what.

Que. Who was he?

Ans. I can't recollect his name—there has been so many *Frenchman* that I can't recollect any of their names—that is hardly any of them, some of them I do.

Que. Where did that Frenchman come—did he come to Spratts?

Ans. Yes sir.

Que. Were these stumps dug up before or after Doctor Dinges, the surveyor was there surveying for the Frenchman?

Ans. I think they was dug up before if I *aint* mistaken.

Que. What makes you think so?

Ans. Why I think they were.

Que. Well do you know?

Ans. No sir I do not know for certain but I think they were.

Que. Do you remember testifying at Harrisonburg Virginia in 1895 in a case of King against Trustees of The Elkhorn and Sandy River Land Trust?

Ans. Yes sir.

Que. Were you not asked the question "*Dident* you say something about a French survey," and did you not answer "Yes sir," were you not then asked "was there any French survey until after the French came in there," and did you not answer "not that I

know of; the first I knew was Dr. Dingess," and were you not then asked by Major Henry "Was he surveying that land," and did you not answer "yes sir," and were you not then asked by him "Who for," and did you not answer "for the French?"

Ans. I said a French survey and I might have said what that is—that is I might have said a French survey but before—that was the first time I was ever on the stand—at Harrisonburg—and I was embarrassed. I had heard of the French survey before Doctor Dinges come there.

Que. Were you not asked the questions above stated and did you not give the answers to them as above stated?

Ans. Well I might have give those answers; but then I had *heard* of it before Doctor Dingess come. Buffington, he run it before Doctor Dingess come.

Que. How long before.

Ans. That I can't recollect it was *sever* years it might have been five or six years before Doctor Dingess did.

page 83.] Que. At the time last mentioned did you not in reply to questions asked you upon direct examination by Mayor Henry as to what *you* Grand Father Spratt said about this survey "say I have never heard him call it anything but the French Survey?"

Ans. Well I expect I did but mind you Morris, I believe it was made by Morris but the French owned it, that is what they said.

Que. Who said that?

Ans. Well all the old citizens.

Que. To the best of your recollection and knowledge how old were you at the time these stumps were dug up?

Ans. I would say *betwixt* eight and twelve years old not over twelve years I think.

Que. You are sixty-four now.

Ans. Yes sir I suppose.

Que. Have you not always heretofore stated that you were born in 1839?

Ans. No at *Abbingto* I gave in my age if I am not mistaken as born in 1836 and they put it down as born in 1839.

Que. Have you not kept account of your age, year by year, since you were a young man?

Ans. No sir the reason I *dident* it is placed on record. Just before I went to Abington I looked at one record and it was 1836 and when I come back I looked at the other one and it was 1838.

Que. At Harrisonburg in 1895 did you not say I am fifty-seven?

Ans. Fifty-five was the way I aimed to give it in anyhow 1838 is the correct record of my age.

Que. When did you first learn that the land where your Grand Father *Lived* was the Crawford survey?

Ans. He first lived on the Cloyd land below the mouth of Gilbert Creek but I don't recollect when he lived there. I was always told ever since I can recollect that he lived on the Crawford survey.

Que. Do you remember testifying before Commissioner Middleton at Williamson, in 1897, in the case of State of West Virginia against LaMoyne and others?

Ans. Yes sir.

Que. At that time did I not ask you "In your examination at Harrisonburg in the case I have mentioned (meaning the case of King against The Elkhorn and Sandy River Land Trust) were you not asked 'who did he say owned the French survey, if any body,' and *dident* you say 'I never heard him call it anything but the French survey.' "and did you not in reply thereto say 'yes sir the only name I ever heard it called was the French survey and I heard him (meaning Isaac Spratt) tell of them coming here for the interests of the Maupertuis—those Frenchmen did?"

Ans. Well I might have said it. I know I got up out of the bed and had the grip and *wasent* capable of going on the stand hardly.

Que. Were you paid any witness fees for attending before Commissioner Middleton at the time above mentioned?

Ans. I think I was paid but I won't be positive but think I was.

Que. Who paid them?

Ans. Mr. Sheppard.

Que. Do you remember in what year your Grand *Father* died?

Ans. I won't be positive but I think in 1858 or 1859.

Here the defendant King moves to strike out all statements of the witness purporting to have been made by Isaac Spratt or any other person and relative to the stumps of which he has testified or relative to any surveys or boundaries or location of any land and the testimony of the witness as to any alleged reputation concerning the same, none of said statements or testimony coming within any rule for admitting hear say or declarations and the same appearing to have been made after a question had arisen as to said corner or the location of said survey.

page 84.] RE EXAMINED.
By Mr. Shepard.

Que. What disposition did your Grand Father Spratt, make of the upper end of the Cloyd Survey?

Objected to as incompetent by the defendant King; if he had any title it must be shown by the record and if he made any disposition of it that also must be shown by the record and by written evidence.

In response contesting defendants state this and other public records were destroyed by fire at Logan Court House during the Civil War.

Ans. He sold it to my father John Stafford.

Que. Did your father live on it or cultivate it?

Objected to by the defendant King, as immaterial.

Ans. He cultivated it.

Que. Has it been occupied and cultivated since your fathers death, if so by whom?

Objected to by defendant King for the same reasons.

Ans. Yes sir; by my *father* children.

And further this deponent saith not.

his
F. S. x STAFFORD.
mark.

Witness proves 3 days and
88 miles travel.

G. S. STONE, being recalled by the commissioner for the purpose of further examination testified as follows:

EXAMINED
By John T. Graham, Commissioner.

Que. Have you calculated the acreage in any of the surveys laid down in your map if so please state what particular survey or surveys as shown on said map?

Ans. I have. I have calculated the number of acres of the Robert Morris tract as designated on map A-P-S-ZZ-MO-MM and A and claimed by the contesting defendants as the true boundaries of said tract.

Que. Please give the number of acres in said boundary and if you have apportioned it among the States and Counties embraced within the same also give me those figures.

Ans. The number of acres within said boundary is 94460 acres of which 7800 acres are in Logan County, West Virginia; 22850 acres are in Mingo County West Virginia; 11050 acres are in McDowell County, West Virginia and 25240 acres are in Buchanan County Virginia and in McDowell County, West Virginia 27520 acres. This is the only boundary I have calculated the acreage of.

EXAMINED

By Mr. Campbell.

Que. Is the poplar block that you delivered to Commissioner Graham the other day the same poplar block which you took from a poplar tree on Knox Creek, and about which you testified, and designated in *you* map by the figure 7 and located on the line P-S.

Ans. It was the same block.

Note by Commissioner, The block referred to was filed by the witness with the commissioner.

page 85.] CROSS EXAMINED

By Mr. Stiles.

Que. Is there anything on the block to indicate which is the upper or which is the lower end of it?

Ans. There is. The upper end of it is cut square across the wood and the lower end at a slant of about forty five degrees.

And further this deponent saith not.

(Signed) G. S. STONE.

THOMAS J. MATTHEWS, a witness introduced in behalf of the same contesting defendants, after being first duly sworn upon oath *testifid* as follows:

EXAMINED

By Mr. Sheppard.

Que. What is your age and where do you live?

Ans. Age 70 years and live Kanawha County, West Virginia.

Que. What is your occupation? Ans. A surveyor.

Que. How many years have you been engaged in that business.

Ans. Forty nine of fifty years.

Que. Have you ever held any official position in your profession?

Ans. I was surveyor of Kanawha County for four years and

was surveyor of the Federal Court for upwards of twenty years.

Que. What experience, if any, have you had in re surveying large tracts of land granted by the Commonwealth of Virginia under surveys made from 1780 to 1800?

Ans. I have had a great deal of experience. I have surveyed nearly all the time on just such lands.

Que. Name the tracts please?

Ans. Well I surveyed Elijah Wood 100,000 acres, and the William McCleary 100,000 acres and the 101,212-1/2 acre tract so much of the latter as is West Virginia, and the James Morris and Rennick 93,026 acre tract and I have surveyed the Galligo 40,000 and the Banks 40,000 acres and the Banks 54,000 acres and Beech and Norton 50,000 and the Norton and Booth 26,000 and a block of the William Whitcroft surveys that aggregate 98,000 acres and a Smith survey of 120,000 acres and I have surveyed part or nearly all of the 500,000 acre tract of the Morris survey, and about a dozen more but I can't think of their names.

Que. At whose direction did you survey the greater portion of the Morris 500,000 acre tract.

Objected to by the defendant King as immaterial.

Ans. Well part of it I done by the directions of Fougeray and Smith under an order of court and part of it I surveyed under the direction of Robert E. Randall and his counsel.

Que. Do you mean E. Randall the Trustee of the Swann estate?

Ans. Yes.

Que. Under the order of what court were you acting?

Ans. Under the order of the Federal Court.

page 86.] Que. What Federal Court.

Ans. It was either under the Circuit or District Court at Charleston.

Que. When did you execute that order of survey?

Ans. I am not sure what year it was but I believe it was in 1885 or 1886.

Que. What, if any, were your instructions and what calls or descriptions did you use in doing the surveying under the order of court as well as what you did under the direction of Randall Trustee?

Ans. The object of the survey was to lay off thirteen thousand acres of land for Fougeray and Smith and one thousand acres I believe for a man named Baugh, which was to be laid off out of the five *hundered* thousand acre Morris survey. They gave me a copy of the Morris grant and a copy of the Wilson Cary Nicholas survey five hundred thousand acres and that was all the papers they gave me to run it by. I afterwards got a copy of a 320,000 acre survey made for Wilson Carey Nicholas and a copy of the 480,000 acre survey *survey* made for him. I believe that was all the papers I got.

Que. When you speak of the Morris grant and Nicholas survey of 500,000 acres do you mean the tract in controversy in this suit? Which for convenience we will refer to as the "King" tract.

Ans. Yes sir.

Que. Did you locate the thirteen thousand acres and the one thousand acres mentioned by you?

Ans. Yes.

Que. What surveying did you do on the King tract? What investigations did you make and what did you find as to its lines and corners?

Objected to by the defendant King as incompetent; the witness can state what surveying he did and what trees he found and it is for the Court to judge of the rest.

Ans. I run from a point below the mouth of Gilberts Creek on the *Guyandott* River, where Doc Stafford and some others pointed out as a place where three sugar trees stood and claimed it was a corner of the Morris 500000 acres to the mouth of Turkey Creek—a point in the line of the 500000 acres called for in the survey and patent to be the point where said survey crossed Tug River or Sandy River. I then run up Sandy River with its meanders to the mouth of Little War Creek—another point called

for in the Morris grant where the upper line of the 500000 acre Morris tract and the lower line of a 320000 acre tract crossed Sandy River; I then went to a corner on Muzzle Creek where there was two poplars and two chestnuts called for two poplars and one chestnut standing and ran with the call of the 500000 acres and the 320000 acres to Sandy River; the course brought me to Sandy River a short distance above Little War Creek and I run down the river and connected with a stake I had driven at the mouth of Little War Creek. Then I proceeded to lay *of* off the thirteen thousand acres for Fougreay and Smith and the thousand acres for Baugh—On the upper or eastern side of the line running from the three sugar trees at the mouth of Gilberts Creek to the mouth of Turkey Creek, as indicated on the map by the small red lines. I afterwards at the instance of Randall and his counsel Major Samuel A. Miller, and William Quarrier, ran a line from the two poplars and chestnut on Muzzle Creek to Guyandotte River; I then ran from the same point on Muzzle Creek to a point on Knox Creek and connected up with a point there shown as where four white oaks stood on a bank of Knox Creek and run from there a west course at a variation of five degrees until I passed the head of paw-paw Fork of Knox Creek, and I found there that I was going to leave the waters of Knox Creek entirely on that course and my distance not being out by a considerable I stopped surveying and come back. I then, in making the map of the tract drew a line from the mouth of Gilberts Creek, where the three sugar trees were shown to stand through the mouth of Turkey Creek and continued that line on to the line I had run down Knox Creek. I *havent* got any notes with me and I speak from memory. The balance of the map I made by drawing a line from the point at the mouth of Gilberts Creek with a variation of five degrees—the course given in the Morris grant to the end of the distance. I then drew a line from there to the point on Guyandotte River that I ran to from the two poplars and chestnut on Muzzle Creek.

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Que. Have you done any surveying on the King tract or had the

supervision and direction of surveying on it since that time, if so state when it was and what was done?

Ans. Yes sir. Last September and October I went up Knox Creek with G. S. Stone—he run a line from the four white oaks on Knox Creek to a place pointed out by Dan Justice on the Race Fork of Knox Creek as a point where two poplars and a sugar tree stood. He then run a line from that point to the point where the three sugar trees was claimed to be at the mouth of Gilberts Creek. We meandered the streams in order to get the true course from one point to the other we run a line down the Race Fork from the point shown as where the two poplars stood to Knox Creek and up Knox Creek to the point shown as the place where the four white oaks stood. We then ran from the mouth of Guesses Fork and up that fork and a branch of it and across and down Long Branch to Sandy River and down Sandy to the mouth of Turkey Creek and up Turkey Creek and the hand fork of same and across on to Ben Creek and from there over on Gilberts Creek and down Gilberts Creek to the mouth —the point where the three sugar trees was shown to be.

Que. Did you and Stone lay your work down on a map?

Ans. Yes.

Que. I will ask you now to look at the map filed with the deposition of G. S. Stone marked G. S. S. and state what lines on that map represent the running that you have done on the King tract?

Ans. Well I first run the line from A to P then from P to S. the line I run would have come a little to the left of S. then from S to Sandy River I *dident* run on that occasion but run from the mouth of Turkey Creek to ZZ. I also run (the first occasion the line from A to MM. When I was up there last fall with Stone we ran from point S down the Race Fork to Knox Creek and then ran up Knox Creek with its meanders as laid down *her* to four white oaks at; then we run from P to S; then we run from S to ZZ.

Que. What did you find at the point A?

Ans. Well the first time I was ever at the point A there was

two poplars and a chestnut standing and one chestnut down.

Que. Were they marked as corner trees?

Ans. Yes sir I blocked one of them, on the north side at the instance of Mr. Randall, it was marked with three hacks on the *noth* side.

Que. Where is that block?

Ans. I gave it to Miller—Randalls Counsel and I don't know what become of it.

Que. Have you made *scarce* or *enquirey* for the block since that, if so *the* what extent?

Ans. When the suit was on trial at Parkersburg between King on one side and I think Mullins on the other they had me to go to Charleston to see if I could find that block. Mr. Miller had died before that time and I went to Clint Gallaher—his son-in-law, who had possession of his papers and office effects and I asked him to look and see if he could find the block but he failed to find it and said he had searched *dilligently* for it.

Que. How did the annulations on the block compare in age to the age of the 500000 acre survey?

Objected to does not appear that they were counted.

Ans. I *dident* count them myself.

Que. Were they counted by any of the interested persons?

Objected to by the defendant King unless done in his presence.

Ans. Mr. Randall I saw him trying to count them but I don't know whether he succeeded or not.

[page 88.] Que. Did you take a block out of either of the other trees at that point?

Ans. Yes we took a block out of the other poplar which was returned to counsel or the court, I dont know who.

Que. Who was with you when you took out the last block?

Ans. Sid (G. S.) Stone is the only man I remember there was some *other* there but I dont remember who they were.

Ans. How did the marks on the two *block* compare as to age in *appearence?*

Ans. They looked very much alike.

Que. State your opinion as to whether they were marked by the same instrument and at the same time?

Ans. Yes I think they were they had every *appearence* of having been marked with the same instrument and at the same time.

Question and answer objected to by the defendant King.

Que. About what sized instrument did these trees seem to have been marked with?

Ans. It was an ax with a blade not more than two and one-half or three inches wide.

Que. Those trees are called for as standing in a branch of Guyandotte River, where did you find them?

Ans. They were standing not far from the Muzzle Fork of Little Huff Creek.

Que. How far were the trees from the branch and how far were the trees from each other?

Ans. My recollection is that it is about one hundred feet from the branch and they were from fifteen to twenty feet apart I measured it but *dont* not remember exactly what it was.

Que. About what sized trees were they?

Ans. I would say that they would be from twenty-four to thirty inches in *diamater.*

Que. On which side were the trees marked?

Ans. One poplar was marked on the north side and the other on the south or a little west of south—I mean the other poplar, the standing chestnut was marked on the north side and I believe on the south west side the other chestnut was down and was sap rotted so that you *couldent* see any marks.

Q. What was the extent of your examination of the poplar blocked by you and Stone?

Ans. Well we examined it very carefully and took a block out of the south west side of it; then to find out whether there was any marks in it or not we cut the tree down and split it up into thin layers to see if we could find any other mark in it but we did not find any.

Que. What did the marks on these trees indicate?

Que. Well three hacks on a tree indicates a corner and if they are properly marked the marks would be on the side of the tree that the line comes to it on and on the side leaving the tree—where line leaves the tree. For instance *it* the line runs a north course and you mark a tree the tree will be marked on the south side of the tree and if it leaves in an east course the tree will be marked on the east side.

Que. Did the marks on the southern side of these trees signify anything as relates to location of a line of the King tract?

Ans. The south west side of the tree being marked would *indicated* that it was a line of the King tract running a southwest course.

Que. What line if any, did the marks on the south-west side of those trees indicate?

Ans. Well it would indicate the line from A to P between the 320000 acres and the 500000 acres.

Que. What line if any did the marks on the north side of the trees indicate?

Ans. It would indicate the line from A to MM or

page 89.] M between the 480000 acre survey and the 50000.

Que. The distance of that line is 6800 poles which would carry you from A to M on the map why did you stop that line at MM instead *on* continuing the full distance?

Objected to by the defendant King as immaterial because his reason for stopping would not determine the propriety of stopping nor effect the true location of the line.

Ans. The call of the surveys and patents makes a corner on the same side of Guyandote River as the Muzzle Corner at A

Que. I notice the letters MM on the map are on the north side of Guyandotte River, where is the point MM with reference to Guyandotte River?

Ans. It is on the south bank of Guyandotte River.

Que. Read the call of the 480000 acre survey north 6800 poles from the point A on the map and state what objects you found and crossed on the line from A to MM responding to the call in the survey?

Objected to by the defendant King as incompetent. The question of correspondence between the objects called for and objects found being a question for the court.

Ans. The only thing crossed is Huff or Cains Creek, near a small branch of Guyandotte River", there is nothing there that represents Laurel Creek. It comes to the river by a small branch of Guyandotte River after crossing Huffs Creek.

Que. What branch or creek do you find instead of the Laurel Creek called for?

Ans. There is not any branch or creek in there but Huffs Creek.

Que. Does that line cross Muzzle Creek?

Ans. I dont recollect that it does. My recollection is that it comes in *be* below the mouth of the creek. It may have crossed a very small fork of Muzzle but I dont recollect it.

Que. Did you find any marked timber on the line from A to P?

Ans. No I think not.

Que. Where is the point P?

Ans. It is on Knox Creek near a mouth of a branch I believe is called John Branch.

Que. Did you find any corner trees standing there?

Ans. No sir it was in a cleared field. There was some two persons I dont remember who they were that pointed out where the four white oaks stood.

Que. The call in the survey of the King tract from the four white oaks on the nort-west bank of Knox Creek is west 3840 poles crossing said creek and some of the branches thereof and along the *souts* of the ridge dividing the waters of said creek and Peter Creek, a branch of Sandy River to three poplars and a sugar tree by a small branch of Knox Creek does the line from P to S located by you and Stone on the ground cross Knox Creek and several branches thereof?

Ans. Yes it crosses Knox Creek and several branches of Knox Creek.

Que. Does that line run along or cross the spurs of the ridge to the south of the line?

Ans. Yes sir.

Que. Is the point S and the stumps of the trees represented by it on a small of Knox Creek?

Ans. Yes.

Que. What did you find at point S?

Ans. Dan Justice showed me two poplar stumps and the decayed remains of a sugar tree) dont know whether the tree had fell down or the stump. We dug down and got out some bark and stuff —it looked like sugar tree bark. The *brak* seemed to come from the part of the tree below the ground.

Que. How did the grounds at that point respond to the call of the survey as compared to the call for and the grounds found at the Muzzle corner at A?

page 90.] Objected to by the defendant King as incompetent because no ground is called for at the end of the second line of the grant and the question of conformity is one for the court *is one for the court* and not for the witness.

Ans. The local description of one is just as good as the other. The grounds at one place *respojd* as well to the calls at the other.

Que. Did you find any line trees in running the line from P to S?

Ans. The only line trees we found that I regarded as a real line tree was a poplar where we crossed Knox Creek at figure "7" on Stones Map.

Que. Did you block the tree?

Ans. Yes we blocked the tree but the ax *dident* go to the wood we *couldent* find any inside marks.

Que. Is that the block filed with the deposition of Stone?

Ans. Yes sir.

Que. How did the marks on that poplar line tree compare in size and *appearence*, as to age, with the marks on the two poplars that you blocked at the Muzzle Corner?

Ans. They were almost identical in *appearence* as to age and

width of cut and they both looked as if they had been cut with a very narrow bladed ax.

Que. State your opinion as to whether or not this poplar tree was marked by James Taylor as a line tree locating this 500000 acre tract?

Objected to by the defendant King as incompetent and immaterial. The question calls for an opinion as to a matter about which the witness can have no possible knowledge and which is not a subject for *exert* opinion and his opinion could not properly tend to establish the fact if it be a fact.

In response counsel for the contesting defendants state that marks upon line and corner trees are as much the subject of expert opinion of surveyors as is handwriting to an expert.

Ans. Well I can state that the marks were exactly like those he made on the corner at Muzzle and that they look fully as old and was made by an instrument identical with that was used at the Muzzle corner. My opinion as an expert is that the man that made one made the other.

Que. Why did he mark a tree not at a corner—James Taylor?

Objected to as incompetent. The witness could have no knowledge as to why Taylor would or would not do such a thing and it is immaterial what reason he might have for doing so if he did it.

Ans. He might have marked it as a line tree; all that he would mark for would be a corner or a line tree.

Que. How many marks was on the poplar found at the creek crossing at figure 7 on the map?

Ans. There was two on the east side and two on the west side and the marks on each side was about six or seven inches apart—one above the other. The lower mark at this poplar was about thirty inches above the ground on each side. At the muzzle corner the marks were about the same distance from the ground.

Que. Did you make any investigations as to whether there was an old trail or path across this *king* tract, when you were making *investigtions* on your first trip into that country, if so state the result?

Objected to by defendant King as immaterial; the existence or non existence of old trails could not effect the location of the grant; no such things being call'd for in it.

Ans. Well I enquired of the oldest people that was in that country—old Peter Cline and his wife who lived on Gilberts Creek and at that time Peter Cline was one hundred and one years old and his wife was six months younger; and his wife told me that she lived on Home Creek when she was a child and that there was a trail down Paw-Paw Fork of Knox and one down the Race Fork of Knox both of which went up Knox Creek to the

page 91.| mouth of Guesses Fork and up Guesses Fork; then one trail went down Bull Creek and one down Long Branch and I believe one down Greenbrier and the other trail went down Sandy River to the mouth of Turkey Creek and up that and crossed over on to the Spring Fork of Ben Creek and went down that to the forks and up the other fork and across the ridge to Gilberts Creek and the trail that went down Bull Creek went up Long Pole Branch and over onto Little Huff. I believe that is all she told me about trails.

Que. In passing through that country when you were locating the King tract did you find any evidences on the ground of the old trail from the Race Fork of Knox leading over to Gilberts Creek?

Ans. Oh when I was there there was trails over all those branches.

Que. State your opinion as to whether James Taylor was at the point and marked timber called for as three poplars and a sugar tree by a small branch of Knox Creek *2which* is represented on the map by point S?

Objected to by the *deveuant* King as incompetent because it calls for an opinion of the witness upon the evidence in this case which is a question for the court, and his opinion is immaterial as it can neither effect nor establish the question as to the corner of the tract.

Ans. I am of the opinion that James Taylor was there and made the corner.

Que. The first object crossed as described the survey on the line

that it called in the survey north 8000 poles is Knox Creek does the line run by you from the three poplar and sugar tree corner at S to the tree sugar tree corner at ZZ cross Knox Creek?

Ans. Yes sir.

Que. At what distance if you remember?

Ans. Well it is between three and four miles but nearer four miles than it is three.

Que. Does that line cross Tug River at the mouth of Turkey Creek?

Ans. The line crosses Tug River below Turkey Creek some little distance but it passes by the mouth of Turkey Creek on the opposite side of River within about seventy *yars* of the mouth of the creek.

Que. Does that line pass about as close to the mouth of Turkey Creek as the line A-P does to the mouth of little War Creek?

Que. Yes is crosses much closer than the line does at War Creek.

Que. The next stream called for in the survey is Buffalo Creek does the line S-ZZ cross any stream where Buffalo is called for?

Ans. The first place it crosses is the extreme head of the left hand fork of Turkey Creek and the next stream it crosses is the right hand fork of the Spring Fork of Ben Creek, the next stream is the left hand fork of the Spring Fork of Ben Creek.

Que. Does the line S-ZZ cross the dividing ridge between the waters of Guyandotte and Sandy Rivers after crossing the last fork of Ben Creek?

Ans. Yes sir.

Que. Does that line then cross Gilberts Creek twice to the point where the three sugar corner stood?

Ans. Yes sir.

Que. State your opinion based upon the work you have done on this survey as to whether James Taylor in making the survey was at the mouth of Gilberts Creek and marked the *thre* sugar trees called for as standing in a bottom of Guyandotte River about twenty poles below the mouth of Gilberts Creek which is represented on the map by the letter ZZ.

Objected to by the defendant King as incompetent calling for an opinion of the witness upon the evidence which is the province of the court to weigh. The witness not having seen any trees at that point cannot testify concerning them.

page 92.] Ans. I am pretty well satisfied that he was at the mouth of Gilberts Creek and made a corner as stated twenty poles below the mouth of Gilberts Creek in the bottom. Now a surveyor may be mistaken in giving course and distance in a line by clerical error but when he says that he marked a corner twenty poles below the mouth of Gilberts Creek, on Guyandotte River, I dont think he made any mistake in his notes.

Que. Returning to the point S—describe the location of the stumps shown you with reference to the small branch at the house of Daniel Justice and with reference to each other?

Ans. Well I think they were as well as I remember about. without measuring it, sixty or eighty feet from the little branch on a hill side and they were about twenty feet apart and the remains of the sugar tree was between the two poplars and there seemed to have been a lynn tree also between the two poplars that we found the pieces of—very near the sugar tree.

Ordered that these proceedings be now adjourned until tomorrow morning at 8 o'clock.

J. T. GRAHAM.
Commissioner.

Thursday May 15th. 1902: Met pursuant to adjournment on yesterday. Present the attorneys for the contesting defendant and the attorney the defendant Henry C. King.

And thereupon Mr. Sheppard attorney for the contesting defendants resumed the examination of the witness Thomas J. Matthews as follows.

Que. Did Daniel Justice in pointing out the two poplar stumps and the location of the sugar tree show you how the sugar tree and lynn stood with reference to each other?

Objected to by the defendant King as incompetent; It is not the best evidence of their location and it calls for a declaration by a living person.

Counsel for contesting defendants state that the reasons for this *enquiry* will be made to appear further on in the progress of this case.

Ans. Yes sir.

Que. Did you dig down into the ground in search of evidences of the sugar tree?

Ans. Yes we dug down and found some roots and bark that we took to be sugar tree and near by it we found some roots and rotten wood of a tree that we took to be lynn.

Que. Have you any doubt as to the bark and wood being that from sugar tree and lynn roots?

Ans. No I have no doubt of we examined it very carefully and I am very well satisfied that one was a sugar tree and the other was a lynn.

Que. Did Daniel Justice in pointing out the poplars stumps indicate to you how they were marked when the trees were standing, if so in what way did he do it?

Objected to as incompetent calling for hearsay.

Ans. Well he showed me by putting his hands on the stumps like he was striking them and said there was three hacks on the east side and three hacks on the north east side.

page 93.] Que. What *llines* on the map marked G. S. S. would the marks indicated by Justice on the stumps correspond to or indicate, if any?

Ans. They would be marked on the sides to represent the line from P to S and the line from S to ZZ.

Que. Had you and Stone run either of those lines before Justice indicated to you on the stumps how the trees were marked?

Ans. Stone had the line from P to S. I *dident* see the point S until *until* after Stone had got to that point.

Que. The call in the survey leaving the three sugar trees about twenty poles below the mouth of Gilberts Creek is north ten east 1450 poles, crossing Guyandotte River several small branches and some ridges to pointers, did you run that line?

Ans. No sir I did not run it.

Que. State your opinion as to whether James Taylor in making the survey ran that line?

Ans. I dont think he did.

Que. Why do you think he did not run it?

Ans. Because he calls to cross Guyandotte River and *and* several small branches and some ridges and never mentions Peter Huff's Creek not Buffalo Creek, which I think he would have done if he had crossed them.

Que. Do you attach any significance to his call for pointers in a wooded country?

Ans. In most of these old surveys when they call for pointers the line was never run unless they mentioned and named the pointers—for instance if the pointers were a white oak and black oak they would say "white oak and black oak pointers." In such a case the pointers would be marked with three hacks.

Que. Is it apparent to one standing at the point shown you as the *locatio* of the three sugar trees twenty poles below the mouth of Gilberts Creek that a line north ten east from them would cross Guyandottee River and then cross ridges?

Ans. Yes sir.

Ques. How is that line indicated on the map G. S. S.

Ans. By the line from ZZ to MO. Which would cross Guyandotte River seven times and Peter *Hufs* Creek and Buffalo Creek and a great many ridges.

Que. The next call is east 6620 poles, crossing Guyandotte River and several small branches thereof to three sugar trees and a *buckeys* by a small branch of the same, being the north-west corner of a survey of said Nicholas 480000 acres, where do you locate the north-west corner of the 480000 acres?

Objected to by the defendant King as immaterial as what he might do would not effect the due location of the corner, which is for the court to ascertain.

Ans. I run from the Muzzle corner at A with the call of the patent to Guyandotte River at MM—that line not calling to cross Guyandotte River I stopped there.

Que. Is the ground cleared or timbered where you stopped at MM?

Ans. I think a good deal of timber was cut away and we *diden't* find any marks any where near it.

Que. The first object called for leaving the point MO is a crossing of Guyandotte river, would the line from MO to MM cross Guyandott River?

Ans. Well the course east would not run to MM—nor do I think it would cross Guyandotte River—I never run the line. The line from MO to MM would cross Guyandotte River.

Que. Would it cross several branches of Guyandotte River?

Ans. Yes sir.

Que. In what order would the line run from MO to MM cross the Guyandotte River and several branches thereof?

page 94.] Ans. It would first cross Buffalo Creek and Peter *Hufs* Creek and Elk Creek and Guyandotte River at the mouth of Cub Creek.

Que. The call as given in the survey mentions the crossing of these water courses in reverse order from the way appear to be crosses in running a line from MO to MM has that any *sifnificance* to you as *as* surveyor—I mean does this fact have any significance as to whether Taylor in locating that line ran it from the pointers to the north-west corner of the 480000 acres or platted it from the northwest corner of the 480000 acres? In other words what is your opinion as to whether that line was platted or run on the ground by Taylor?

Ans. I think James Taylor platted the line from Gilberts Creek to MO and back around to the Muzzle corner and I dont think he ran any of them.

Que. What is your opinion as to whether Taylor in locating the 480000 acres was at the point called for as three sugar trees and a buckeye by a small branch of Guyandotte River and marked the trees called for as and for a corner of the survey?

Objected to by the defendant King as incompetent; the witness never having seen the trees and it is immaterial because the witness having testified that Taylor platted those lines the marking of the

trees if done would have not legal influence on the locality of the tract, or the boundary thereof.

Ans. I never have run the lines of the 480000 acres I really *couldent* tell anything about it nor express any opinion in regard to it I ran the line from A to MM—according to the calls the trees ought to be fifteen or twenty miles from A somewhere on Guyandotte River if he ever marked them.

Que. When you used the word calls do you mean the local description of the corner or the course and distance given in the grant and survey?

Objected to by the defendant King as leading and because the term calls means the whole description of the line given in the grant.

Ans. I meant the course and distance.

Que. If you follow the local description given in the survey on which side of Guyandotte River would the three sugar trees and *buckeys* be located?

Ans. On the south side of the river.

Que. Do you find the courses and distances given by Taylor in the survey to be reliable?

Objected to by the defendant King as incompetent calling upon the witness to determine the relative force or value of one element of description of the grant over another which is the gist of the contention before the court and is to be determined by the court.

Ans. No I think not on the contrary I think they are the most unreliable courses and distances that I ever tried to run.

Que. Are the local descriptions given in Taylors survey reliable or unreliable?

Objected to by the defendant King for the reasons stated in the last objection and for the further reason that localities and points to *eich* those descriptions apply, elsewhere than on the line A-P are not established but are in dispute and controversy herein.

Ans. The most of his local descriptions are very accurate—for instance the corner at Muzzle at A is described as being on a branch of Guyandotte River and a line from there to P calls to cross Sandy River at the mouth of Little War Creek and Panther

Creek to four white oaks on the bank of Knox Creek at P and a line from P to S calls for crossing Knox Creek and several branches thereof to two poplars and a sugar tree on a branch of Knox Creek at S from there to ZZ it calls to cross Knox Creek and Sandy River at the mouth of Turkey Creek and a ridge between Sandy and Guyandotte Rivers and Gilberts Creek twice to three sugar trees twenty poles below the mouth of Gilberts Creek on a bank of Guyandotte River, which I think is as good a local description as could be given.

page 95.

Que. State your opinion as to whether or not James Taylor in making this survey went over the ground from the three poplars and sugar tree by a small branch of Knox Creek at S on the map to the three sugar trees in the bottom of Guyandotte River about twenty poles below the mouth of Gilberts Creek indicated by the letters ZZ on the map?

Objected to as incompetent; it is immaterial what ground he went over unless he actually surveyed the line and it is also immaterial because if he did survey such line it is manifest from the evidence that it was done without reference to any previous lines or corner and through *ignorence* or mistake as to their locations of the other lines and corners and other objects mentioned and without connecting with such lines by actual survey.

Here counsel for contesting defendants enter a protest against arguments being put at the conclusion of each question by counsel for defendant King and request his objections be briefly stated without taking the timet to produce an argument.

Counsel for H. C. King in reply *state* that it is his purpose merely to state the ground of his objections and if opposing counsel consent that a mere statement of objections *shant* be deemed sufficient to raise any question as to the ***admisability*** of evidence that might be raised or made if the grounds of such were here stated at length, the counsel for Mr. King, defendant, consent that the commissioner may note the objections by the mere expres*ion* "Objected to by counsel for defendant King."

Counsel for contesting defendant give their consent to the above proposition.

Here the witness answered the above question: I think he did. For the reason that I dont believe that any man without going over the ground could have give the local description of the ground that he passed over in going from the point S to ZZ unless he had went over it.

Que. In your own opinion was James Taylor familiar with Knox Creek? Tug River or Sandy River, Turkey Creek, Little War Creek, Tug River between Turkey Creek and Little War Creek and Gilberts Creek at the time of making the survey?

Objected to by defendant King.

Ans. I think he was.

Que. Take certified copy of James Taylors plat of this King tract and state your opinion as to whether the water courses laid down thereon were laid down from actual survey or sketched in from memory?

Objected to by defendant King.

Ans. I think that they were actually surveyed He *couldent* laid down the streams so accurately unless he had done it. I also think he run the courses of Sandy from Turkey Creek up it to Little War.

Que. Do you mean to say that in your opinion James Taylor meandered the different streams which he put on his plat and that he platted them according to such meanders?

Objected to by defendant King.

Ans. No I only give my opinion that he meandered Sandy River from Turkey Creek down to Little War; The other streams I think it is likely he only laid them down from his crossings of them.

CROSS-EXAMINATION

By Mr. Stiles Attorney for Mr. King.

page 96.] Que. Do you think he laid down the streams where he crossed them or ran with them?

Ans. Yes I think he did.

Que. How far did you find it to be from Turkey Creek to Little War when you ran it?

Ans. I don't remember it has been so long ago that I don't now recall it. I can approximate it from the map at about eight miles.

Que. Taylor *he* if ran the same river between the same points he ought to have found it at about the same distance ought he not?

Ans. I suppose he would.

Que. On his map he represents the river as flowing northwesterly for about ten miles making a bend and flowing southwesterly for about an equal distance before leaving the western boundary of the survey, you find do you not that the river flows in fact nortwesteriy for about ten miles to the mouth of Ben Creek and then makes a strong turn as shown at Elk Creek on his map to the south west.

Ans. Yes, but Ben Creek is not on Taylors Map.

Que. But instead of Ben Creek at the bend of the River you find a creek laid down on his map called Elk Creek do you not.

Ans. Yes sir. It being the first creek below Long Pole.

Que. Coming to a matter of local description—the line P A runs almost exactly the course given by Taylor in the survey of the 320000 acres does it not—did you not find it so in running it?

Ans. I think very nearly so.

Que. Following that course given on beyond Sandy River it lead you to the two poplars and two chestnut trees on a branch of Guyandotte River, did it.

Ans. I ran that line from A to P—running it on the patent course on the patent calls would lead you very near to those trees at A it would run a little north of the trees.

Que. The local description of the trees is "On a branch of Guyandotte River" it does not name any particular branch not any particular point thereon, now independent of the course and distance would not any point on any branch of Guyandotte River aswer that local description?

Ans. It would provided you found the two poplars and two chestnuts on the branch.

Que. Without the course or distance from the preceding corner would you know in what locality to look for those trees from the local description "on a branch of Guyandotte River."

Ans. No any other branch of Guyandotte River would fill that part of the description just as well.

Que. From the local description of three sugar trees and a *buckeye* called for as the northwest corner of the 480000 acres and the north-east corner of the King tract, which is "by a small branch of Guyandotte river" would you know where to look for such trees or be able to tell where they must have stood if all the country were cleared and no trees to be found?

Ans. No sir, not even if there was trees I *wouldent*.

Que. Would you expect to find them on or close to the river?

Ans. The description is that they are near the river—according to the map they are near the river.

Que. If it was intended to describe such trees as at the point indicated by MM would not the designation be "On Guyandotte River" or some such expression?

Ans. It would be on the south side of Guyandotte River.

Que. Was there considerable timber where your line from A north reached or approached the river?

Ans. I don't *thing* timber was very plentiful there, it was not cleared.

Que. Are sugar trees or buckeyes merchantable trees such as are cut by timberman and lumberman or have been cut for timber purposes in years past on upper Guyandotte River?

Ans. No I think not.

page 97.] Que. When you ran the line north from A you knew you *dident* cross *Litle* Huff Creek near the mouth *dident* you, or "a small distance above the mouth?"

Ans. Yes I knew that.

Que. You know that was only about five or six miles to the river instead of more than twenty, did you not?

Ans. I don't think it was more than then three or four miles—from where I crossed Huffs Creek down to its mouth.

Que. You also knew from running the line that it could not

be twenty miles nor more than about five or six miles from the Muzzle Corner to Guyandotte River did you not, *independent* of your actual measurement.

Ans. No I don't think it was more than five or six miles—yes I knew it at that time.

Que. If you had varied that line ten or fifteen degrees either way from north would you not have struck the river within a less distance than you did running north?

Ans. No I think not. Since examining the map I think it would.

Que. Do you as a surveyor believe that a surveyor could have gone from A north or north-ward to any point south of Guyandotte River without discovering that the distance was not more than five or six or seven miles?

Ans. No I don't think he could and as I stated before I don't think he ever run it.

Que. The local description of the south-west corner of the *the* 500000 acres or *rathre* of the trees mentioned is by "a small branch of Knox Creek," so far as local description is concerned could not that corner as well be on the head of Paw-Paw or some branch of Guess Fork as at any other place on Knox Creek waters?

Ans. Well the head of Paw-Paw might fill the description as well but Guess Fork *wouldent*, from the fact that he was running down the spurs of the ridge between Knox Creek and Peters Creek, he says, and when he left that point he crossed Knox Creek showing that he was on the west side of Knox Creek, while Guesses Fork is on the East Side.

Que. But so far as the expression "by a small branch of Knox Creek" is concerned one small branch would answer as well as another especially west of Knox Creek?

Ans. Yes so it was a branch of Knox Creek west of Knox Creek.

Ques. When you ran the line from P westward about 1886 did you find any marked corner trees?

Ans. No sir.

Que. To what point did you run?

Ans. I continued the line to the head of Paw-Paw and found I was going to cross out of the Knox Creek waters and the distance not being out I stopped surveying for the reason that the corner was called for on a branch of Knox Creek.

Que. Did you make any search or enquiry for marked timber?

Ans. No I did no: make any *inquirey* for there was no body, to enquire of and I did not search very much, and I *dident* think it was a very healthy country at that time to be making *enquireys* in.

Que. Why *dident* you search?

Ans. Well I did look some but not very much. I found the survey so out of gear that I *dident* know where to search.

Que. When you are up at the four white oaks is it not apparent to casual observation that Knox Creek takes a general north-west course from that point?

Ans. Yes.

Que. The second line of the survey west 3840 poles from the four white oaks calls to run to cross the creek and to cross several branches and spurs of the ridge between Knox Creek and Peter Creek, could you not tell from the point P that a line run pretty much anywhere to the west-ward from there, within several degrees, north or south of west would cross the creek and its branches and the spurs of the ridge between Knox Creek and the creek to the south of there and—could you not tell

page 98.| that without running it?

Ans. Of yes if you was any ways acquainted with the country you could.

Que. Could you not tell that from mere observation coming down Knox Creek to the P and then running off towards Muzzle corner?

Ans. Yes to stand there and look at it is looks as if would run that way.

Que. Taylor's Peter Creek is south of the survey while the Peter Creek branch of Sandy River laid down on the map is west of *whether* you locate the survey according to the red lines or according to the black ones is it not and lies about where State Creek a branch of the Levisa Fork of Sandy River really is.

Ans. According to this map (Stones) Peter Creek is west of either of the lines.

Que. But Taylor puts it south *doesent* he?

Ans. Yes.

Que. Were all the trees at Muzzle Creek marked on two sides as far as you could see when you were there in 1885 or 1886?

Ans. No the two poplars only had one side of each marked; one of the poplars was marked on the north side and one on the south-west side and the chestnut I believe was marked *one* two sides—on the north side and on the south-west side but I am not sure about that even.

Que. If they had been originally marked on the south-east and south-west sides you judge that some of the marks must have become *indescenable*.

Ans. If they ever were marked on them sides the marks had been obliterated.

Que. Do corner marks in the course of a good many years generally become *indiscernable* and difficult to distinguish from natural defects or casual blemishes in the bark?

Ans. Some kind of timber it does but it is not all timbers.

Que. How is it with poplars and chestnuts?

Ans. Well poplar and chestnut might *loose* their marks in time; they *loose* their marks by the outside bark falling off or being pulled *of* or by animals rubbing against it or climbing it and knocking it off.

Que. Mr. Stone testified that in the poplar that you and he blocked at the Muzzle Corner in 1896 there was a mark *visable* in the wood that did not show on the bark, if that was so must it not have *been* that the mark once *visable* on the bark had become *to* dim with age to be identified as a mark.

Ans. I don't remember that instance but it is a very common occurrence to find marks in the tree and not on the bark I have found marks in the wood that were not *visable* in the bark at all.

Que. How were the marks at the Muzzle corner, were they quite plain or did you have to look the trees over to find them?

Ans. They were very plain on the outside.

Que. Was not the block that you took out on the north side of the poplar in 1885-6 really taken from a point about north forty two to forty four east instead of exactly north?

Ans. My memory is that it was on the north side—it might have been a little to one side or the other of that point. When I was there the second time I looked at it with a view to that point. When I run the line from that point to Guyandotte River I thought the mark was exactly on the side we run from.

Que. There had been a good many previous resurveys of the 480000 acre tract, or portions of it from that corner, had there not?

Ans. I only know by hearing that there was but know nothing about them personally.

Que. You found no marks on the north side of the poplar you blocked in 1896, did you?

Ans. No sir.

Que. To what counsel did you deliver that block or the blocks taken from that tree?

Ans. I think it was delivered to Chilton and some of the counsel in the case but I think Stone now has it.

page 99.] Que. That was blocked without notice to Mr. King or his counsel was it not?

Ans. I dont know whether they had any notice of it or not. I *dident* give them any.

Que. The three hundred and twenty thousand acre survey being older than the 500000 acre tract the marks on *rhe* south-west side of the tree at A would indicate a line of the *3hree* hundred and twenty thousand run to that corner instead of a line of the 500,000 acres run from it would it not?

Ans. That would indicate that it would mark a line of the

320000 acres run from Knox Creek to that point.

Que. Would there be any appreciable difference in the appear*ence* of marks one hundred years old and marks seventy-years old, for instance on the same kind of a tree?

Ans. Well in a *genaral* way there would not be very much difference in the *appearence* of them. For instance I saw marks on a chestnut oak tree on Paint Creek the marks were—one set of them was on the upper or exposed side of the tree and the other was on the lower side of the tree where they were protected. It was a leaning tree. The marks on the upper side were scarcely *cisable* while those on the under side look as if they had not been made twenty years. These marks were about 85 years old and had all been made at the same time. That survey was made in 1795.

Que. You have stated what a corner mark on a tree indicates with reference to the running of a line to or from it, saying that it indicates that the line was run to or from it, now where a line calls to run from a corner of another survey on a given course different from the lines of the other survey and you find no marks corresponding to such line what does that indicate as to whether the line was or was not run from such corner?

Ans. I have seen marked lines running from a tree marked in that manner where they *wasent* sign of a mark on that side of the corner tree corresponding with that line but that is not usually the case.

Que. What would the absence of the mark generally indicate?

Ans. That the line had not been run to or from it—that it was a protracted line.

Que. If for instance there were no marks on the corner tree at P—on the west side of the tree, what would that of itself indicate as to whether any line had been run westward therefrom as a line of the 500000 acre tract?

Ans. Well in a general way it would indicate that there had been not a line run from there but that is not always the case, the surveyor frequently in running from a marked corner *dident* put any additional marks on it as it was already marked as a corner for

another survey and he *dident* put any additional marks on it., but they generally did.

Que. Where the new line runs in a different direction from any of the lines for which the tree is already marked is it not the rule to mark the tree for the new line the same *aas* if had not been otherwise marked?

Ans. *Thay* more often did that than otherwise. But I know of a survey on Pocatalico River known as the Military survey that was made in 1773 on which there was made a survey made adjoining onto it at two corners each one was a poplar and neither of them was marked on the side for any but the military survey; on the side on which the other survey left the military there *wasent* any marks at all and still there was a marked line running from each one of these trees for the latter surveys which were made in 1787.

Que. In running a line through a timbered country how often does a *surveyo* generally mark trees for line trees?

Ans. They have no regular rule I have seen surveys where the line trees were a quarter and a half and as much as a mile apart —that is all that was standing. I have run other lines that every available tree was marked some times not over fifteen feet apart, and I have run a survey and found as many as fifteen and twenty corners where I *dident* find a single marked line tree between the corners.

page 100.

and that is the case in this William McClary 100000 acres.

Que. Unless you found line trees at reasonable intervals you would conclude the surveyor who ran the line *dident* undertake to mark it would you not?

Ans. Well they *dident* mark them. On that McCleary survey if it was a long line there was a few marked tree on it but if it was a short line I *dident* find any.

Que. You *wouldent* call one or two marks in six or eight miles a marked line would you?

Ans. Well I found on that McCleary survey on a line six miles four or five trees they were exactly on the line and I think as well

as I remember they were all in the beech timber in the bottoms where they crossed the streams.

Que. What is the nearest patch of cleared ground in the neighborhood of S?

Ans. Point S is in a field—all cleared.

Que. About how large?

Ans. I suppose there is eight or ten acres in it and probably more than that.

Que. Is it not cleared from there up to the head of the creek, is it?

Ans. No sir.

Que. Nor east nor west of there for any distance?

Ans. I think I saw indications of a cleared field up the little branch.

Que. Out side of that field it is a timber country for a considerable distance around?

Ans. Yes sir.

Que. Are there any other stumps in that field besides the ones you have spoken of?

Ans. Yes there is a good many and there is some old dead trees standing there.

Que. How close was the lynn stump or the remains of it to the remains of the sugar tree stump?

Ans. It *wasent* more than two or three feet.

Que. Could you judge anything of the size of it?

Ans. No.

Que. Or of the *six* of the sugar tree?

Ans. No I *couldent* tell the size of either one as they had rotted down into the ground and dirt had fell in and I could not tell anything about them.

Que. Were there any other stumps very near the lynn and sugar except the poplars?

Ans. No I think not the poplar stumps was the closest to the sugar tree and lynn of any other stumps.

Que. Do you remember whether there were any stumps nearer

to the lynn and sugar trees or to either of the poplars than was the other poplar?

Ans. I dont remember that there was there might have been but I dont recollect it. My attention was particularly called to the sugar *trees* and poplar and if there was any others I dont remember them.

Que. How much of a branch is the little drain that has been spoken of near the stumps?

Ans. It is a small branch probably not a half mile long but there was water running in it when I was there, which was in September last I believe.

Que. When did you first hear about the stumps at the point and how?

Ans. I think that when I first heard of them was in September when I was up there.

Que. You had never heard of any marked timber over in that neighborhood before or stumps of marked timber?

page 101.] Ans. No I had never *heared* anything about them till about the last day of August. I went with Mr. Campbell down to Huntington and he told me he wanted me to go with the surveyor to look after the corners and lines of that survey up there and that is the first I even heard *tha* they wanted any surveying done or were going to do any.

Que. You never heard any thing about such corner trees in prior trials of the King cases did you?

Ans. No sir.

Que. You stated on direct examination that you thought Taylor went over the ground from three poplars and a sugar tree by a small branch of Knox Creek to ZZ?

Ans Well I meant that I thought he went over the ground or he could not have described that line as well as he did describe it I dont think — man could unless he had been over the ground.

Que. Do you mean that he ran the line on the ground?

Ans. I think it is likely he did, he either ran the line on the ground or followed those streams across there and measured the distance.

Que. Do you remember testifying at Abindon Virginia in 1899 in the case of King against Watkins and others. The question was asked you by Major Henry "What Mr. Taylor did is what we want to know," and did you not answer "It would be hard for me to tell at this day what Mr. Taylor did do." Then the court said "give the jury idea of what lines he ran and what lines he platted" and Major Henry added "and what corner he was at," and did you not answer "my opinion is that he made the Muzzle Creek corner at A and the line down to Knox Creek then he ran down from there without measuring down Knox Creek until he thought he was far enough and then made his way over to Turkey Creek on the best route that he could and then went from Turkey Creek the same way over to the mouth of Gilberts Creek and gave a course that would not run on the course by about thirty seven or thirty eight degrees and that come in by several miles, I dont think it possible that he could have ever measured it or even given the degree." Do you remember giving that testimony?

Ans. Yes I recollect it. But since that time in surveying over there I found out a great many facts about this that I then *dident* know.

Que. You had before you at that time a map similar to the one marked G. S. S. showing substantially the same creeks and the natural features did you not?

Ans. Yes sir.

Que. Was it not apparent from that map what streams various lines would cross and at what distances and on what courses as shown by the present map?

Ans. Yes pretty nearly so but my understanding of it then was that none of these lines on Knox Creek had actually been run on the ground—they was protracted lines.

Que. You speak of the accuracy of Taylors description of the line of the survey as represented by the line S-ZZ, does he mention anything but Knox Creek on that line—that is the third line of the survey north 8000 poles, between the south west corner and Sandy River?

Ans. My recollection is that the call of the patent said that he

crossed Knox Creek at about four miles and Sandy River at about twelve miles.

Que. Knox Creek is the only object mentioned from the beginning of the line until *your* reach Sandy River?

Ans. Yes sir.

Que. When however you take the line S-ZZ you find that it runs down Race Fork all the way to main Knox Creek although no mention is made of that fact in the survey that after crossing Knox Creek, it crosses another branch of it coming in from the north side of which no mention is made by Taylor and then crosses upper Elk Creek for which there is no corresponding call in the survey, and then crosses a high ridge between the Knox Creek basin and Long Branch of Sandy River, then runs down Long Branch, crosses a high ridge to *Greenbriar* Creek and runs down the same and across the ridge to the river not one of which

page 102.] objects is referred to in the grant or survey except Knox Creek, ought not the various branches I have mentioned to be referred to and called for in the description of a line running from S to ZZ and is the description of a line which omits them an accurate description of the country?

Ans. Well there is very few surveys of that age and made at that time that mentions such small branches as them at all unless the corners is on them.

Que. The line given by Taylor calls to cross Knox Creek at about four miles; the line S-ZZ crosses Knox Creek at about three and a half miles leaving nine and a half miles of the patent call to Sandy River, what do you find the distance on that line to be?

Ans. I find it about three and five eighths miles to Knox Creek on a level and Sandy River twelve and three eighths miles.

Que. You find the distance on that part greater than Taylors calls to Sandy River?

Ans. Yes three sixteenths of a mile.

Que. The call 8000 poles is twenty-five miles, taking off 12 miles to Sandy River leaves thirteen miles from Sandy River to

the mouth of Gilbert what do you find the distance Sandy River and the mouth of Gilbert on the line S-ZZ?

Ans. Seven and one half miles.

Que. You find then that if you take the line S-ZZ to represent the *this* line of the grant that out of the calls of twenty-five miles you get from the twelve miles to Sandy River—twelve miles and three sixteenths of a mile and of the remaining thirteen miles of Taylors call from Sandy River to the mouth of Gilbert you get only seven and one half miles, would that indicate that Taylor had run and measured line as a line of the survey where S-ZZ is laid down on the map?

Ans. Well it is as near as any he ever run. It comes nearer being the right distance than any he run in the survey. I dont suppose he measured it very accurately but he was at all these points along the line called for.

Que. Do you know of any other instance where his line is longer upon the ground than he calls it?

Ans. Yes I think I do. The line from the Muzzle corner to Knox Creek he reports it seven miles longer than it is to Knox Creek. I was mistaken in the question no I dont know of any other instance where his lines are longer on the ground than he calls it.

Que. Is it consistent of an actual survey of the line to find the first twelve miles measure out about twelve and a quarter and the next thirteen measure out about seven and a half?

Ans. No there *aint* any thing consistent with James Taylor.

Que. The call of the same north 8000 pole line from Sandy River on crossing Sandy River at the mouth of Turkey Creek and up said creek, the line S-ZZ you say passes the mouth of Turkey Creek on the opposite side of the river then crosses the river and instead of going up Turkey Creek goes up a *diferent* branch—Lick Branch and merely crosses the extreme head of the left hand fork of Turkey Creek, which is the only place it touches the creek —is that part of it in conformity with Taylors call, or is it a description of the line he gives, or would his description "crossing

Sandy River at the mouth of Turkey Creek and up said creek" etc. correctly describe that protion of the line S*ZZ*?

Ans. Well that is just in conformity with my opinion, he run a line to the mouth of Turkey Creek and run up said creek and up the left hand fork of it and crossed the ridge on to Ben Creek, two forks of Ben Creek and crossed the ridge to Gilberts Creek and then ran down Gilberts Creek to the mouth.

Que. He does not call for running down Gilberts Creek does he?

Ans. No he does not. I am pretty confident that he followed those creeks and trails across there and *dident* run a straight line.

[page 103.] Que. If Taylor had followed the creeks and trails from the south west corner to Sandy River *his* the distance would have been still greater than by running a straight line and if he had followed creeks and trails from S. on *an* north-east he would have overrun the distance of twelve miles and would have been likely to call it considerably more than twelve miles would he not?

Ans. Yes I think it would have been longer.

Que. His call on the line north 8000 poles after his call for Turkey Creek, is for Buffalo Creek and Pigeon Creek—for crossing them, Pigeon Creek you find in what direction and how far from the line you ran S-*ZZ*?

Ans. I *dont* know how far it is but it is several miles and all the Buffalo Creek that I know is on the opposite side of *of* Guyandotte away down the river.

Que. The line as described by Taylor does not apply to your line S-*ZZ* so far as Buffalo Creek and Pigeon Creek are concerned.

Ans. No sir. There is no Buffalo Creek or Pigeon Creek there. It crosses two forks of Ben Creek.

Que. The two forks of Ben Creek are much smaller and more insignificant than Race Fork of Knox or Long Branch

or Greenbrier which your line S-ZZ *chases* and of which there are no mention on Taylors line?

Ans. I *dont* think they are as large as some of those streams you have named.

Que. Your line crosses the second fork of Spring Fork of Ben Creek close up in the head does it not?

Ans. Yes pretty close to the head.

Que. In running that line you can see that the head of that fork is not more than a quarter or half mile east of the line can you not?

Ans. No I think not, it is not more than that

Que. You say you do not think the line ZZ-MO was run by Taylor because he *doesent* mention Huff or Buffalo Creek, if he had run a line from ZZ north ten east would he not probably have said running down Guyandotte River and crossing the creeks you mentioned?

Ans. I think it is likely he would if he had run it—it is very evident that he *dident* do it; he would hardly cross Guyandott river seven times without saying something about it.

Que. When you are at the mouth of Gilberts Creek you can readily observe that the river at that point runs off to the north for a long distance, can you not.

Ans. About all you can see of the river from the mouth of Gilberts Creek is that it starts off north for a short distance and then turns west.

Que. You could see that a line north ten east would run down with the river for some distance as shown by the map could you not?

Ans. Yes as shown by the map but Taylor *dident* have that map was the trouble. I hardly think you can see from that point that north ten east runs with the river. The river turns off to the left and there *is* a big mountain right in the way that you *cant* see the valley of the river.

Que. *Dont* you think the ax mark in that poplar block that

Stone brought here from Knox Creek is cut deeper than any mark on the trees at the Muzzle corner and is also shorter?

Ans. No I *dont* it was cut deeper from the fact that it *diden't* go to the wood and the others did.

Que. I mean that the gash or hollow in the bark is a deeper pit than any shown on the Muzzle Corner trees.

Ans. I think it is exactly like the block I took out of the poplar at the Muzzle corner, except the one at the Muzzle corner had cut into the wood and this did not.

Que. *Wouldent* one man make much the same
page 104.] looking mark as another?

Ans. Yes he would if he had the same instrument to make it with or one just like the other one.

Que. What sort of instrument was generally used by surveyors?

Ans. In that day they used what was known as a tomahawk. It was a long bladed hatchet with a very narrow edge not more than two an half *of* three inches wide.

Que. Were you present when Stone was running the line P to S?

Ans. Not all the way I *wasen't*.

Que. If a surveyor had two given lines of other tracts upon which he was required to lay off a stated quanity of land—a very large quantity, the quantity to be certain as determined by the call *there* in an entry would he not probably before going into the distant field to lay it off determine about what *what* lines it would be necessary to run to accomplish the purpose, about the length and course of the lines?

Ans. Yes I could determine all that before I started out, but I *couldent* describe the ground that I went over or the corners that I made or the streams that I crossed or anything of the kind.

Que. You could do that probably but they *wouldent* be correct?

Ans. No I *couldent* describe the *gound* or the streams I

crossed at all because I *wouldent* know anything about it—what kind of streams I passed over or what I cornered on.

Que. You could make a description could you.

Ans. Oh yes I could make a description but I *dont* think any surveyor would do it.

Que. Did you never hear of a chimney corner survey or an office survey, what is such a survey?

Ans. I have heard of such things but I *dont* know any thing about them I have only heard them named.

Que. The entry for the four hundred and eighty thousand acres was made in the office at Wythville on the 1st. day of September and all the lines but two—one of which calls for about twenty miles and the other for about thirty or more were lines of other surveys, on the tenth of September—ten day after the entry was made the survey was reported as completed is not the inference irresistible that those two lines were made without actual survey on the ground but were platted by the surveyor at his office at Wythville.

Ans. I think it is very likely that they were platted to that extent two lines of it would be an office survey.

Que. Would it be possible for the surveyor between first and tenth of September to run any part of those lines

This and the foregoing question is objected to by the contesting defendants

Ans. I think not

Que. If it should be shown that James Taylor was at Wytheville on the twentieth day of October for instance this survey being concluded on the 28th., the entry having been made on the 13th. would not that incline you very greatly to doubt that he ran on the ground any lines as line of the 500000 acre tract except such as had previously been run as lines of other tracts

Ans. That would look as if he *hadent* run the lines but he may have done it like a great many others did in that day and even in recent days *the* would frequently go out and make a survey before they made *they made* the entry. I have known

that to be done in a great many instances in my day. I have done it myself. I was in the neighborhood where the men wanted to enter and survey his land and I would survey his lands make out the entry in accordance with the survey and have it recorded and record the survey. I made a half a dozen in what is now Lincoln County once for people that wanted make an entry and would record the entry and date the survey a few days after the entry and record the *the* survey. That is the way that a great many of these old large line surveys were made.

page 105.] People living a long ways from where they would have to go to get the warrant would just give me the money to buy the warrant and make the surveys for them

Here the defendant King moves to strike out all of the answer of the witness after the first sentence ending with the word "before the made the entry" as not responsive and as not competent evidence

Que. If the surveyor, Taylor, had run the line P. to S and thence to ZZ would he not probably have discovered that he was not laying off 500000 acres?

Ans. I should think he would.

Ques. If he was familiar with Tug River from the creek laid down on his map as Turkey Creek up to Little War Creek would he not have discovered when he arrived at Turkey Creek if he ran the line to that place that he was only about six or seven miles from Little War Creek and that his survey would if he know anything about.

Ans. I should think he would if he know anything about it

Que. You were a witness in the case the State against LaMoyne before Commissioner Middleton at this place were you not in 1897

Ans. I might have been but I *dont* remember it. I remember being before Middleton for some purpose but what for I *dont* now remember.

Que. At whose instance did you do the work you have described in Buchannan County last year or this year?

Ans. At Mr. Campbell's

Que. Did you give any notice to Mr. King or any one representing him of the surveying or blocking of trees that you intended to do or was representative of Mr. King with you?

Ans. No sir I *didont* give any notice myself and *dont* know whether any body else did or not.

Here the defendant King moves to strike out and excluded from consideration all the evidence of the witness relating to his surveying or investigations of land in Virginia since the filing of the fifth amended bill herein.

RE-EXAMINATION

By Mr. Shepard.

Ques. An answer given by you on cross examination leaves the *impresion* that you intended to state that Elk Creek as laid down on Taylor's map is the same creek laid down on the Stone Map as Ben Creek do you mean that the creek Taylor lays down as Elk is Ben Creek

Ans. No I stated that it was the first creek below Long Pole which I supposed is Four pole. I *thoght* that was understood at the time that Fourpole was the first creek below Long Pole.

And further this deponent saith not.

signed THOS. J. MATHEWS.

Witness claims 8 days and 300 miles.

It is ordered that these proceedings be now ad-
page 106.] journed until tomorrow morning at 8 o'clock.

JOHN T. GRAHAM,
Commissioner.

Friday May 16th, 1902: Met pursuant to adjournment on yesterday Present: The same parties as on yesterday.

G. S. STONE being recalled by the contesting defendants for the purpose of further examination testified as follows.

EXAMINED

By Mr. Shepperd.

Que. When you were at the three poplar and sugar tree corner on the small branch of Knox Creek did you notice anything near the location of the sugar tree as shown to you that would more definitely determine or fix the former location of the sugar tree, if so what was it?

Ans. I found a portion of a lynn stump there after examining the same and seeing that it was a lynn I told Dan Justice—the man who pointed it out to me as being where the sugar tree stood that it was a lynn stump, he told me that the sugar tree had died before he moved there and that there was only a snag of it standing when he first knew it and that it was standing by a lynn and that it had been burnt all around before he knew it.

Here the defendant King moves to strike out the alleged statement of Dan Justice.

Que. How close to the remains of the lynn root did you find the remains of the sugar tree roots and bark?

Ans. About two feet.

Que. What evidence did you find of the sugar tree?

Ans. I found what I taken to be a sugar tree root.

Que. Have you at any time in your work upon this survey made an examination with a view of finding the three sugar trees and buckeye by a small branch of Guyandotte River, if so state the extent of *of* your examination.

Ans. I have. I traced the line from point A on the map to Guyandotte River near point MM, north 4° east to the mouth of Brook's Branch of Guyandotte River and finding that the ground had been cleared at that point I made no search for corner trees. I made no examination from the mouth of Little Huffs Creek to the mouth of Brooks Branch.

Que. When you were at the point MM did you set your compass

on the next call of the 480000 acres survey being north 85° east 10050 poles crossing Guyandotte River etc.?

Ans. I did. I set my compass there and it would cross Guyandotte River.

CROSS-EXAMINATION

By Mr. Stiles attorney for King/

Que. You could set your compass a mile or two miles south of that point or five miles, or ten miles or twenty miles or twenty five miles north west of that point and that course would still cross Guyandotte River would it not?

Ans. I believe it would.

Que. When you were at the point S at the alleged maple stump did you notice the remains of the lynn stump at that time by maple stump I mean the sugar tree you have mentioned?

Ans. I did

Que. Did it impress you?

Ans. As *i* have stated when shown this point I told Dan Justice that was not a sugar stump but on further examination I found what I taken to be sugar roots. There is a great deal of difference as to sugar and lynn trees or roots.

page 107.]

Que. Why did you not say something about this lynn in describing these stumps in this locality upon your *formar* examination?

Ans. I was not asked the question in regard to the lynn.

Que. Have you been at that place since you testified the other day?

Ans. I have not.

Que. You know William A Lester, who testified in this case?

Ans. I know John Lester and Levi Lester but I do not know the boys as to their respective names?

Ans. Which one of them was here in the court room yesterday morning?

Ans. I saw *Jonnie* Lester in the Court Room yesterday morning.

Que. He was here in consultation with counsel for contesting defendants.

Ans. I dont *now* what he was here for. As I had no conversation with him.

Que. Did you not see him in communication with counsel for contesting defendant—Mr. Campbell or Mr. *Shepard*. in this room or on the street?

Ans. While in this room I did not see him speak to any one. I passed the front door and he was sitting on the counter at the front of the room. I did not see him speak to any counsel in this case on the streets.

Counsel for Mr. King states that he saw the said Lester in conversation with the counsel for the contesting defendants and the purpose of this *enquirey* is merely to show that the witness Lester appears to manifest an interest in the conduct or result of this case.

Contesting defendants move to strike out the above statement of counsel.

Que. How much of the remains of a rotten stump at any time at the point S did you find?

Ans. The root that I taken a piece off of was about two inches in *diamater*. That is as far as I made an examination.

Que. Were there any other stumps in the immediate neighborhood of the stumps heretofore described?

Ans. There was a beech stump about twenty feet east of a line drawn from the two poplar stumps—south east of a line drawn from the two poplar stumps.

Que. How large a stump was that?

Ans. It seems to have been about twenty inches

Que. Were there any other stumps near the poplars?

Ans. I dont remember of seeing any other stumps within forty or fifty feet of the poplar stumps.

And further this deponeth saith not.

G. S. Stone,

testing defendants, after being first duly sworn upon oath testified as follows:—

EXAMINED

By Mr. Sheppard.

Que. State your age residence and *occupayion?*

Ans. Age, 42 years, residence, Bristol Tennessee and occupation Civil engineering and surveying.

page 108.] Que. How long have you been engaged in the business of surveying

Ans. Since 1882.

Que. What experience have you had during that time in land surveying?

Ans. For six or seven years following 1882 I followed land surveying and its various branches almost exclusively, since that time from time *time* I have been engaged in land surveying along with railroad work and other branches pertaining to engineering.

Que. What experience, if any, have you had in resurveying lands originally surveyed by James Taylor, assistant surveyor of Wythe County, in the year 1794?

Ans. I surveyed some of the lines of what is generally known as the *Wilcon* Cary Nicholas 500000 acres, this tract is more particularly described as "The Eastern 500000 acre survey" sometimes known as the Maitland survey; and in 1884 I made a survey of what is known as the Robert Morris 500000 acres survey more recently known as the King *Tlact.* I am strongly of the impression that he made some of the surveys in what is known as the *Posahontoas* Coal field a great many of which I surveyed.

Que. At whose instance did you resurvey this King tract in 1884?

Objected to by defendant King.

Ans. Major Jed Hotshkiss of Staunton Virginia employed me to make the survey.

Que. What connection, if any did Major Hotchkiss have with the owners or claimants of that survey?

Objected to by defendant King.

Ans. He was directed to have the work done by Robert E. Randall, trustee of what was known as the Swann estate, of which this survey was part—he having shown me his authority

Que. Did you report your survey?

Ans. Yes.

Que. To whom?

Ans. Major Hotchkiss

Que. Have you a copy of that report

Ans. Only the map accompanying it and constituting a part thereof.

Que. What were your instructions as to how you should locate this King tract and what papers did you have at the time you made your survey?

Objected to by defendant King.

Ans. I had no instructions whatever as to, how I should locate the tract I had copies from patent of the King tract, also the 480000 acres tract and the 320000 acres: I also had a plat showing the said surveys in their relative positions to which I think was added the Kettera 180000 acres. I had not copies of the surveys *others* than those mentioned. The copies of the patents referred to embraced the surveys of the said tracts.

Que. Where did you begin your survey of this King tract?

Ans. At the corner designated as the beginning thereof and particularly known as the Muzzle corner and designated on the Stone map by the letter A.

Que. What timber did you find at that point?

Ans. Two poplars and a chestnut.

Que. Were *the* marked as corner trees?

Ans. Yes.

Que. In what direction did the marks indicate the lines of the surveys as running to or from them.

Ans. They were marked on the north side also on the south indicating that lines ran north and south therefrom. I dont remember that there was more than one series of marks on the south

side of the trees nor do I remember distinctly as to the exact course indicated thereby.

Que. Where did you run from that point?

Ans. I ran the line represented on the *stone* map by A-P to a point on Knox Creek.

Que. The corner called for in the survey at the end of that line is four white oaks on the north-west bank of Knox Creek, did you find those trees?

page 109. | Ans. No.

Que. Where did your line terminate with reference to Knox Creek?

Ans. The course adopted carried me perhaps a quarter of a mile to the east of point P; I then off-set to a point near the bank of Knox Creek, also near the mouth of a small branch of the same.

Que. Did the course and distance take you to that point?

Ans. The first course *apopted* carried me a short distance to the east of the mouth of a Little War Creek, the description having called for the mouth of Little War Creek I off-set and corrected the course so to pass the mouth of said creek—that course carrying me to the point previously mentioned; the distance was very materially short of that called for in the survey.

Que. Why did you not run out the distance given by Taylor?

Ans. The description of the survey called for four white oaks on the bank of Knox Creek, to have continued the line would have required me to cross Knox Creek and pass on to the waters of Levisa Fork of Sandy River. The point P was also pointed out to me by a man by the name of Blankenship as the location of the four white oaks.

Que. Was the ground at that point *clearded* or timbered?

Ans. All the timber was destroyed, that is the large timber

Que. The line from A to P as given by Taylor calls for crossing Sandy River and Panther Creek, does the line as run on the ground cross any other water course?

Ans. It crosses Horse Creek and one other small branch of Sandy River and numerous branches of Panther.

Que. Part of that line as described by Taylor runs "down War Creek to the mouth" does the line run along the bed of War Creek?

Ans. The line as surveyed by me was a little to the east of the line as shown on the Stone map and I did not run down Little War Creek but down the ridge to the east thereof. The line does not run along the bed of Little War Creek.

Que. That part of the line as described in the 320000 acre grant is "up said War Creek to the forks thereof and up the north east fork to the head and along a ridge and crossing the same to two poplars and two chestnut trees etc.," does the line run up War Creek to the forks and then up the north-east fork?

Ans. It does not, and no straight line could conform to that description.

Que. Does this fact have any significance to you as to how James Taylor located that line?

Objected to by the defendant King.

Ans. Yes. It would indicate that James Taylor pursued the course indicated by the description instead of running the straight line to the two poplars and two chestnuts.

Que. Read the whole of the call given in the 320000 acre survey from the four white oaks to the two poplars and two chestnuts and state from your experience and investigation along that line on the ground, how it was located by James Taylor?

Objected to by the defendant King.

Ans. The distance all being given in *mioes,* the smallest subdivision being one half would indicate that the line was not run on the course given and I think Taylor followed the general course of the line passing down Panther Creek, perhaps, to its mouth and up Sandy River to the mouth of Little War Creek, thence up little War Creek and on to the two poplars and two chestnuts as described in the survey.

Que. Turning west on the second line of the King tract what water courses did you cross—I mean in what order?

Ans. I crossed Knox Creek, Blackies Fork, Lester Fork, Race Fork and on to a branch of Paw-Paw Creek.

page 110.] Que. Have you been over that line of the survey since you ran it in 1884 if so describe the line as you last passed over it, where you began, what it crossed, where it terminated and what you found?

Ans. Yes. I was over the line from point P to S, it first crosses Knox Creek, thence Blackies Fork, Lester Fork, and Race Fork to a point near a small branch of Race Fork identified by two poplar stumps, with the remains of a decayed stump—pointed out to me as a sugar stump.

Que. Did you dig down and make an examination for the roots of the sugar tree?

Ans. I did not.

Que. You may now describe your survey of this tract made in 1884?

Ans. Having previously described the work on the first line, I ran from the four white oaks corner north 86° west crossing the branch previously described to a point near the head of Paw-Paw Fork of Knox Creek; I found to continue the line as described in the survey would carry me on to the waters of Levisa Fork of Sandy River, the description having specifically called for a corner on a small branch of Knox Creek, I felt that I could not consistently continue the line further; after making a search for the timber called for at this point and finding nothing, I ran a meander line down Paw-Paw Creek down Knox Creek to the mouth of Cedar Creek up Cedar Creek, crossing the head branches of upper Elk, Long Branch, Greenbrier to the mouth of Turkey Creek, up Turkey Creek, crossing the head waters of Spring Fork of Ben Creek to a point on Gilberts Creek near the mouth of Big Lick Branch; thence down Gilbert Creek to the mouth thereof and to a point on the bank of Guyandotte River about *twnty* poles below the mouth of said creek at a point where three sugar trees were called for. When at the said point on the head of Paw-Paw Creek I found that the course called for in the survey would not conform to the monumental de-

scription of the creeks expressly described on this course, other than that acquired by own personal investiagtion and *enquirey* from natives, I adopted the meander line previously mentioned in order to locate the points referred to. From the mouth of Gilbert I continued a meander line down Guyandotte River to the mouth of Buffalo Creek and up Buffalo to the point of intersection of a line bearing north ten east from my point below the mouth of Gilbert, then I took the course north ten east following it some distance on to the ridge north of Buffalo. The description of the corner called for at the treminus of this line—north ten east line, was so *indefinate* that I came to the conclusion that no corner had ever been fixed at its termination I instituted no search for timber or other markings at this point or along the line. I then returned to the beginning point and ran the last line described, reversing the course, and running on a bearing north three degrees and ten minutes east, crossing Muzzle Creek twice, Little Huff Creek, North Spring some distance east of its mouth, to a point on Guyandotte River near the mouth of Cub Creek. At this point I connected to a transit line of Craig Miller's running down Guyandotte River to the mouth of Gilbert Creek having previously connected my line at the mouth of Gilbert Creek with Miller's line. This completed the exterior *boundry* of the main body of the survey. I did not run the last line mentioned in the King Survey as east 6620 poles, but closed the entire survey by platting said line.

Que. Describe the point where you stopped below the mouth of Gilbert Creek and state why you stopped there?

Objected to by defendant King, so far as his reasons for stopping are asked for.

Ans. I stopped at a point in a small bottom about twenty poles below the mouth of Gilberts Creek and on the south bank of the Guyandotte River. This point was pointed out to me by one or two of the citizens residing in the immediate vicinity as the location of the sugar trees called for: this was the

page 111. only point that filled the description given in the line from the three *polars* and sugar called for on a

branch of Knox Creek, the bearing of which was given as north 8000 poles.

Que. Will you please make and file a copy of your map showing the survey made by you in 1884 and mark the same N. L. R?

Ans. I herewith file a blue print copy of my map N. L. R and make the same a part of my depositions.

Que. What lines of the King tract have you since gone over, when was it and who was with you?

Ans. The lines from P to S and S to ZZ, as shown on the Stone map G. S. Stone, E. Montgomery and over a part of the lines also by Moses Lames and Levi Lester.

Que. Take the survey as reported by Taylor and tell us what objects called for by him on his line from the three poplars and sugar tree by a small branch of Knox Creek to the three sugar trees, twenty poles below the mouth of Gilberts Creek are found along the line indicated on Stone's map from S to ZZ?

Objected to by the defendant King.

Ans. Knox Creek, Sandy River, Turkey Creek, The dividing ridge between Sandy and Guyandotte Rivers and Gilbert Creek.

Que. What is your opinion based on your experience as a surveyor and your survey and examination of the King Tract as well as your experience on other surveys made by James Taylor as to whether or not he was at the places and marked the timber called for as three poplars and a sugar tree on a small branch of Knox Creek and three *suagr* trees in a bottom of Guyandotte River about twenty poles below the mouth of Gilbert Creek, as the south-west and north west corners of that survey?

Objected to by the defendant King.

Ans. I am very firmly of the opinion Taylor was at the points described and marked the timber called for, as the south-west and north-west corners of the said survey—by the north-west corner I mean the point designated on Stone's map by the letters ZZ.

Que. What lines of the survey known as the King tract *weere*

in your opinion platted by James Taylor, without any survey being made on them.

Objected to *be* defendant *Kink*.

Ans. The line calling for north ten east and the next line following calling for east 6620.

Que. The line calling east 6620 poles seems from the survey reported by Taylor to call for the objects to be crossed in re*corse* order, how do you account for that?

Objected to by the defendant King.

Ans. Having a plot of the 480000 acres he drew the line east 6620 poles from the north-west corner of this 480000 acres as laid down on the plot until it intersected the line north ten east from the three sugar trees below the mouth of Gilbert Creek; having plated line from the north-west corner of the 480000 acre tract westward, he prepared his description so as to conform with the course on which the line was platted and in preparing his final description of the 500000 acres he neglected to transpose the monumental descriptions as given on that line.

CROSS EXAMINATION

By Mr. Stiles, Attorney for H. C. King.

Que. How large a tract of land *antinetly* surveyed had you resurveyed prior to the work you did upon the Morris grant?

Ans. I don't know that I had made anything over four or five thousand acres. I ran two or three lines of the eastern 500000 acres but I am under the impression it was after the survey of the King tract.

Que. You had about two years experience as a surveyor of lands when you undertook to make the survey you have described?

Ans. Yes.

page 112.] Que. Was not that surveying really done for a man named Ogle— an Englishman?

Ans. No.

Que. From whom did you receive your compensation?

Ans. From Major Hotchkiss.

Que. How did you find the Muzzle corner?

Ans. I think it was pointed out to me by a man by the name Ellis, living on Little Huff *beflow* the mouth of Muzzle. If not by him in person he sent a man with me to the corner.

Que. You spoke of two poplars and a chestnut do you know of anything of another chestnut?

Ans. No I remember nothing about another chestnut

Que. About how old, in you judgment, did the marks on those trees appear at that time?

Ans. I *dont* remember

Que. Well did they seem to be ancient or not very many years old?

Ans. There was no question raised as the fact of this being the beginning corner to the King Survey also a corner to the 480000 acre and 320000 acres and I only observed the markings sufficiently close to satisfy me that it indicated the corner, consequently I did not charge my memory as to the age of the markings.

Que. You dont remember of their *impression* you as being twenty or thirty years old at that time?

An. No I do not.

Que. If in your report of the work you stated that they appeared to be not more than twenty or thirty years old, was that your *impresion* at the time?

Ans. It was.

Que. The line you ran passed somewhat to the east both of War Creek and the place shown you as the location of the four white oaks at P, what variation did you allow from the patent course?

Ans. I *dont* remember.

Que. Might not the failure of your line to coincide with the mouth of War Creek and the point P. result from an allowance of *to* great or *to* small variation?

Ans. The variation of 4° adopted on the next succeeding line, which conformed closely to my calculated variation, if ap-

plied to the line in question would have still thrown it too far to the east.

Que. You ventured the opinion that in running the lines of the 320000 acres from P. to A/Taylor did not run the line but went down Panther Creek and up the river to Little War Creek and then on to Muzzle Creek, if he did so where do you think he got the course north thirty-three east given in the grant which has shown to be *acurate* within less than one degree?

Ans. I think it was an *aproximation* that *happened* to result in being very near the true course.

Que. Do I understand you to mean by that—that he guessed at it and guessed right?

Ans. I do not know by what means he *aorraved* at his conclusion as to the course of the line.

Que. That course as laid down on the map with variation of 4° is almost identical with the course of the line as laid down from S to ZZ is it not?

Ans. They very nearly coincide.

Que. Did you state whether in your opinion *Tatylo*r ran the third line of the survey called to run north 8000 poles?

Ans. I think he pursued something of the same course on that line that was pursued in the location of the first line with the resluts of material error as to course, but with a closer approximation as to distance than on the first course.

Que. Do you mean by that that he ran the line with compass and chain on the ground or that he *dident*?

Ans. I do not think he ran the line with *compas* and chain.

page 113.] Que. If a surveyor were to start from the point P and run to the head of Panther Creek and then down the creek and up the river passing two and a half or three miles away from his line and returning to it and running up another creek and going on four to six miles to a corner giving as the course between the two corners north thirty-three decrees east, which is almost the exact course would it not be remarkable if in

running or going between two corners in a *parallell* line *line* by a similar method of perambulation that he *sould* state the course of the latter line to be due north, a variance of thirty-three degrees?

Ans. Yes.

Que The line you ran from the four white oaks west coincided, so far *ast* it went with the line P-H on the Stone map did it not?

Ans. Yes. Practically so.

Que. The line in the patent is described as crossing Knox Creek and several branches and the spurs of a ridge which is mentioned *wouldent* that *desfription* apply equally well to a great number of lines that might be run from P with several degrees divergence either way from west?

Ans. Yes.

Que. Can you in fact run any line in that country for miles around there for any considerable distance without crossing ridges and branches I mean a straight line?

Ans. No.

Que. You never ran the line from Knox to Muzzle

Ans. No not from Knox to Muzzle but I ran it from Muzzle to Knox.

Que. When you ran your line west from point P to the head of Paw-Paw did you find or learn of any marked timber or corner trees *west-oward* from P?

Ans. No.

Que. What search or enquiry did you make?

Ans. I searched about a half a day in the vicinity of the terminus of my line on the head of Paw-Paw

Que. About where with reference to Q2 on that line did you terminate your line?

Ans. It was from a mile and a half to two miles to the west.

Que. What inquiry in that neighborhood or elsewhere did you make if any for marked timber that might be corner trees besides the search you made on the ground?

Ans. I availed myself of every opportunity to secure informa-

tion of that character but do not remember the names of any one of whom I made inquiry on Paw-Paw Creek

Que. How long did you remain in the vicinity of Paw-Paw Creek or Race Fork, with your surveying *corpse* at that time?

Ans. I had my camp on Paw-Paw Creek several days, perhaps a week.

Que. How many men did you have with you?

Ans. I had four or five. I employed citizens to aid me along the work and failed to remember distinctly how many I had.

Que. What was the character of the country from P to Paw-Paw Creek, was it heavily timbered?

Ans. The ground was very rough and it was well timbered

Que. Along in the neighborhood of where you stopped and turned towards Sandy River and in fact all through that country there were small branches at short intervals, were there not?

Ans. Yes.

Que. That is true also along Guyandotte River where you surveyed, was it not?

Ans. Not at such close intervals.

Que. But of you go some distance away from the river you would find them at short distances would you not?

Ans. Yes.

Que. When you turned back from the head of Paw-Paw your object was to reach Turkey Creek and Gilbert Creek was it not, and not to run out any particular quantity of land?

page 114.] Ans. My object was to determine the true location of the Morris 500000 acres or King tract and finding that in order to do so I would have to run by the mouth of Turkey Crek and thence to the mouth of Gilbert.

Here the defendant King moves to strike out the answer as the same is not responsive to the question.

Que. It was not my purpose to enquire your ultimate object in that country but to know whether you were endeavoring to reach a particular point on Tug River or Guyandotte River or whether you had no particular destination in view, with that explanation please answer the *preceding* question?

Ans. I ran with the object of reaching the three sugar trees at the mouth of Gilbert, running by way of the mouth of Turkey Creek—that point being explicitly described in the survey.

Que. You knew where those creeks were did you?

Ans. I had ascertained from enquiry their proximate location. I had never been at either *Gilbert* or Turkey Creek.

Que. And when you got there you laid down the course north thirty-seven east, or thereabout and not north, did you not?

Ans. Yes.

Que. If you had run north from where you stopped would you have crossed Tug River?

Ans. Yes.

Que. At about what distance?

Ans. At about eleven miles, as I measure from the map; no its 12 miles.

Que. *It* you had run north from the point where you made your corner at what distance and at or near the mouth of what creek would you have crossed Tug River.

Que. I would have crossed Tug River at about eleven miles and in the vicinity of *of* the mouth of Beech Creek, as located on Stones Map.

Que. And what distance would you have crossed Paw-Paw Fork, being a large fork of Knox Creek?

Ans. About three and one half miles.

Que. About the same distance that the line S-ZZ crosses Knox Creek is it not?

Ans. Yes.

Que. If you continue on that line would you not cross Pigeon Creek and the creek before reaching Pigeon Creek and the dividing ridge between Sandy and Guyandotte Rivers and with slight, if any variations cross Island Creek twice, a short distance from the river?

Ans. It would cross the creeks mentioned, with the exception of Island Creek, it being about a mile and a half to the west of Island Creek at its mouth.

Que. How many degrees would you have to vary that line from north to cross Island Creek twice and terminating at the mouth of the creek on and near the bank of Guyandote River.

Ans. About five or six degrees.

Que. With that variation it would still cross the river, creeks and ridges already mentioned?

Ans. Yes.

Que. About what would the distance be?

Ans. About thirty-three and a half miles.

Que. That is eight and a half miles longer than the patent call for the third line of the survey which is twenty-five miles, is it not as permissable to extend the line to reach an object called for as it is to shorten the line to stop at an object called for?

page 115.] Ans. Yes.

Q. Would a line north ten east 4450 poles from the point last mentioned below the mouth of Island Creek cross Guyandotte River once and several small branches and some ridges?

Ans. I have never made any surveys in that vicinity but such a line would necessarily fill that requirement, same being true of a line forty or fifty miles up the river or forty or fifty down.

Que. When you had run your random line from the head of Paw-Paw to the mouth of Gilbert Creek how did you determine the straight line that is laid down on your map?

Que. It was platted from the intersection of the line north 86° west to the point at which the three sugar trees were called for about twenty poles below the mouth of Gilbert Creek.

Que. You drew the line from ZZ to intersect with the line west from P did you?

Ans. I drew the line to make it conform with the call at the mouth of Turkey Creek that placed the intersection at the point Q 2.

Que. You have treated MM as the north-west corner of the

tract I believe and have platted the *preceeding* line to that point have you not?

Ans. In a former enquiry the point ZZ was referred to as the north-west corner of the survey but the point MO is more properly the north-west corner of the survey.

Que. I meant to say that you treated MM as the north-east corner—Mr. Taylor puts his north-west corner west of the north-east corner please ascertain the unknown location of the pointers by reversing from MM the call of the patent?

Ans. I have reversed the course line running from the "*ppointers*" to MM.

Que. Can you draw any straight line from any paint west of P and south of Sandy River to the twenty poles below Gilbert Creek without crossing Sandy River, the dividing ridge between Sandy and Guyandotte River and Gilbert Creek twice?

Ans. No.

Q. Did you ever hear of any Buffalo Creek of Sandy River except Buffalo Creek that flows into Sandy river south of Pigeon Creek, some twenty or twenty-five miles west of where you run the line S-ZZ?

Ans. No.

Que. Your line S-ZZ crosses or runs down both of the first two creeks on the south side of Tug River above your Turkey Creek, how does Taylor on his map lay down his line with reference to the *the* first two creeks flowing into Sandy *Rver* from the south above his Turkey Creek.

Ans. They are represented as being quite a distance above his line and lying within his survey.

Que. You have stated certain natural objects which you find on the line S-ZZ that you regard as conforming with patent calls, do you not find on that line numerous other *prominant* objects which are not mentioned as being on the line of the survey of Taylor and find missing certain other *prominant naturab* objects for which Taylor does call on the corresponding line of the survey?

Ans. With the exception of certain monuments mentioned in the description of this line that are not found on the line the description of Taylor would be very similar to the description that a surveyor of the present day might formulate to determine the location thereof.

Defendant King moves to strike out the answer as not responsive and requests a direct answer to the question.

Witness further answers:—With the exception of a dividing ridge between Knox Creek and Sandy River there are no objects that might be designated as prominent; Buffalo Creek and Pigeon creek as called for are not found.

Que. Would you not call Race Fork, down
page 116.] which that line runs all the way to Knox Creek—three and one half miles and Long Branch and Green Brier Creek down which the line also runs some four miles crossing from one to the other, prominent objects on the line you lay down from S-ZZ?

Ans. I regard such objects as may be necessary to fix the location of the line as *prominant* objects; Race Creek may be regarded with some degree of prominence in the location of said line but the other creeks mentioned I do not regard them as prominent.

Que. When were you last over the line P-S?

Ans. On April last on the 22nd. and 23rd. of said month.

Que. Did you go over the line S-ZZ about the same time?

Ans. Immediately following.

Que. For what purpose?

Ans. Not having been on the ground since my survey in 1884 at the instance of the counsel for the defendants—*represented* by Mr. Shepard and Campbell I went on the ground to determine whether not I could *I could* discover anything that would lead me to change my views in *rregard* to the location of this survey.

Que. If you stand at the mouth of Turkey Creek and look up the creek you would look to the east would you not?

Ans. Yes.

Que. But if you stand at the mouth of Turkey Creek, as shown by Taylor you would *fact* north and not east would you not?

Ans. Yes.

Que. If you were on or near the head of Race Fork or Paw-Paw Creek—the nearest course to Sandy River would be down Knox Creek and almost due north the course of the patent call would it not?

Ans. Yes When I was there however I was advised that it was so very rough down Knox Creek that it was practically impossible to travel that route, this was when I was there in 1864.

Que. Who was with you on your last visit that day?

Ans. Stone, James, Lester and *Montgomer* as previously stated.

Que. Did you notify Mr. King or any representative of his or so far as you know was any such notice given of your intention to visit that locality or go over *and* lines?

Ans. No. Nor do I know of any such notice being given.

Ans. Have you examined the map made by Taylor accompanying the report of the survey of the 500000 acres in question in this suit and also the map made filed by Mr. Stone?

Ans. Yes.

Que. Let us compare your theory of the 500000 acre tract with Taylor's, your works with his, your geography with his: He makes his survey twenty-three miles wide at the middle and twenty at the top, you make it seven miles wide in the middle and then a mathematical point—nothing at the top. He puts his north-west corner twenty miles west of his north-east corner, you put it nearly north eleven miles. He makes his fourth or west corner twelve miles further west than his south-east corner, you put it four miles further east than his southeast corner He puts the same corner twenty four miles from the beginning

corner, you put it about four. He includes twenty miles of Sandy River and Twenty-five of Guyandotte in his location, you about seven miles of Sandy and four of Guyandotte in yours. He puts the head of Pigeon Creeks five miles inside of the grant you leave it seven miles outside. He makes Pigeon Creeks rise six or eight miles to the north-east of his Turkey Creek, you find it to rise about an equal distance north-west of your Turkey Creek. He makes Guyandotte River flow south west through the tract from the northern end, you make it flow west and north *enterning* on the east side. He puts Guyandote River more than twenty-one miles from the beginnin corner, you put it at five and a half. He makes the area of his survey 500000 acres you make *your* about 90000 acres. Do these facts sustain the theory of an actual survey by Taylor of the territory embraced in your location of the grant,

page 117.] or the theory that the survey made by you embraces the same land described in the grant to Morris, or the theory that Taylor had an accurate or trustworthy knowledge of the country and natural objects embraced in your survey or described in his own.

Ans. The comparative statement embodied in the question is somewhat at *varience* with the facts; the survey referred to as a mathematical point is represented by the line MO-MM. The *forth* corner of the survey is six and seven *eighthe* miles from my beginning point instead of four miles as stated.

The theory that he ran and measured the lines have not been advanced by me, nor is such a theory sustained by the facts you have stated here. The fact that Taylor places Guyandotte River some twenty one and a quarter miles north of the beginning corner, when as a fact it is about five and a quarter miles explains the discrepancy referred to with reference to the width of the north end of the survey; this error also explains the length of Guyandotte River as *representes* by Taylor on his map. The description given by Taylor sustains the theory that the land embraced in my location is the same as that embraced in his. The

discrepancy in the *platt* as compared with the location on the ground shows an error on Taylor's part in the relative positions of the prominent monumental points called for as represented on Taylor's plat *ans* sustains the theory that Taylor's location embraced the same territory as was embraced by my location. It shows that his knowledge of the county was perhaps general as to its geographical features.

Que. You were called as a witness in the State against LeMoyne and gave your depositions before Commissioner Henry O. Middleton?

Ans. Yes sir.

Que. Who or what counsel parties had you called in that case?

Ans. John A. Shepard.

Que. Was your testimony at that time addressed to the same general subject matter as on the present occasion?

Ans. The same property was involved or rather the question of a location of the lines of the same property.

Que. From what point or place did you come for the purpose of testifying in that matter?

Ans. From Bristol Tennessee.

Que. Were you here upon that matter for several days?

Ans. Yes.

Que. Did you receive any compensation beyond the legal witnes fees and milage—that is were you paid expert fees?

Ans. Yes I suppose it could be regarded in that light.

Que. By whom were they paid?

Ans. I am under the *impresion* that Mr. Shepard paid me himself.

RE-EXAMINATION
By Mr. Shepard.

Que. In all of your work upon this survey claimed by King and all of the protracting and *theoritical* lines you have examined at the instance of King's counsel, have you found any line

that responds to the call given by James Taylor for the western boundary line of the survey except the one from S to ZZ on Stones map.

Objected to by defendant King.

Ans. I have not.

Que. Would not James Taylor's form of platt be better preserved for Mr. King, if you were to begin at P and run the survey by reversing the calls, folowing each line to its full length and on the bearing given in the survey totally disre-

page 118.] garding *al* the geographical features of the country?

Objected to by the defendant King.

Ans. Yes.

And further this deponent saith not.

Signed. N. L. REYNOLDS

Witness claims 9 days
and 292 miles.

On motion of the contesting defendants these proceedings are continued until Thursday May 22, 1902 at the same place to begin promptly at 8 o'clock A. M.

JOHN T. GRAHAM
Commissioner.

page 119.] Williamson, West Virginia, Thursday May 22'' 1902: Met pursuant to adjournment on 16th. inst. Present: attorneys for contesting defendants and M. F. Stiles attorney for the defendant Henry C. King.

GEORGE FULLER a witness introduced by the contesting defendants after being first duly sworn upon oath testified as follows:

EXAMINED
By Mr. Campbell.

Que. State your age residence and occupation?

Ans. I am 63 years old last April 22nd., I live in Buchanan

County Virginia, on Rock Lick Creek; occupation farmer.

Que. Are you acquainted with the locality where Daniel Justice now lives on the Right Fork of the Race Fork of Knox Creek?

Ans. Yes sir.

Que. When were you at or by his residence last?

Ans. Well I cant tell you exactly, I guess it has been some three or four years since I have been there.

Que. State if you ever saw any marked timber trees standing in that locality if so state about how many years ago?

Ans. Yes sir, I saw marked timber there. As well as I remember it has been betwixt twelve and thirteen years ago.

Que. State who, if any one, was with you at the time?

Ans. Yes sir, Miles Lester was with me.

Que. Did you see this marked timber more than once, if so how often and how close together in point of time?

Ans. I seen it twice; I dont know that I can tell you how far apart I saw it again the third day after I saw it the first time.

Que. Who, if any one was with you on the second time?

Ans. Miles Lester.

Que. What were you and Miles Lester doing on these two occasions?

Ans. We was a hunting in there to see if there was any vacant land.

Que. Who was wanting the land, you or Miles Lester?

Ans. It was Miles Lester's brother that wanted the land.

Que. Why were you along?

Ans. Well he come after me. He come after me to go with him. None of them *couldent* read; they had courses of some land and they wanted me to take those courses and see if I could find any vacant land.

Que. What kind and how many trees did you see marked near Dan Justices residence?

Ans. I seen two trees marked—One was a poplar and the other was a beech.

Que. How was the poplar marked—how many hacks?

Ans. Three hacks.

Que. How many sides was the poplar marked on?

Ans. Well I aint sure about it but the best I can recollect one was marked on the east side and the north side but the other side I aint sure it was marked on the east side or how it was marked.

Que. Were there three hacks on each of the two sides?

Ans. Well the best of my recollection there were.

Que. Where did this poplar tree stand with reference to the little drain that comes down into the right fork of Race Fork?

Objected to by the defendant King.

Ans. Well I cant exactly tell it was close to the drain though as well as I remember about it.

Que. On which side of the drain as you would go up the drain—right or left?

Ans. Well I dont know that I can tell but it appears to me on the left side it appears—I might be mistaken.

page 120.] Que. About how far from the Right Fork of Race Fork does this poplar stand?

Ans. Well sir I cant tell you how far it was. I know it was on the west side of the fork but I cant tell you how far from it.

Que. What was the *appearence* of these hacks on the poplar in respect to age, whether they were old or recent?

Ans. They were old.

Que. With what sized instrument were they made in your opinion?

Objected to by the defendant King.

Ans. Well sir they were betwixt twenty and thirty inches somewhere that is the poplar *itm* might have been larger as I never measured it and cant tell.

Que. I mean how long were the hacks on the tree and with what sized instrument or tool were they made with?

Ans. It looked like it had been marked with a hatchet, well

as I remember they were about three inches long they might have been a little longer—I cant tell exactly.

Que. How was the beech marked?

Ans. Marked on the side, with two hacks—I call it a side line as well as I remember.

Que. How far was the beech away from the poplar?

Ans. Well sir I cant recollect how far it was—it was some distance from it.

Que. Was it below or above the poplar?

Ans. Below if my mind serves me right.

Que. What was the *appearence* of these marks on the beech in respect to age whether old or young?

Ans. They were old.

Que. About how long were *theee* hacks on the beech?

Ans. Well about the same as on the poplar.

Que. Did you examine any of the other trees standing near the poplar to see if they had any marks on them?

Ans. I did not.

Que. What experience, if any have you had in surveying or assisting in surveying lands and running lines?

Ans. I have had some sir.

Que. What part of the work did you do.

Ans. Sometimes I marked and sometimes I carried the chain.

Que. Do you remember what papers you and Miles Lester had with you when you saw these trees?

Ans. It appears to me there was two or three courses—two or three surveys as well as I remember. There was some cirners we was a hunting for them was J. N. Watkins and R. D. Colemans—that is them we was a hunting for when we found this and I told them that none of them corners *dident* hit that corner we found as none of them called for that kind of timber.

The defendant King moves to strike out the last part of the answer.

CROSS EXAMINATION

By Mr. Stiles.

Que. What was the corner you were hunting for,

Ans. Well as best as I can recollect it was an oak and a black gum we was a hunting for.

Que. Did you find those trees,—the oak and black gum?

Ans. No sir.

Que. Did you find any other marked trees that day or see any of them?

Ans. Yes sir I seen some other marked trees that day but it was quite a distance from there about a mile or so on top of the ridge. That was J. N. Watkins's line on top of the ridge I was following it trying to find the corner that comes over next to the Race Fork after I got off the top of the hill I *couldent* find it any further.

Que. What kind of trees were those you found on top of the hill?

Ans. I think mostly chestnut oak—they were page 121.] marked.

Que. Were they marked as a corner?

Ans. No sir they were line trees.

Que. Did you find any other corner trees at that time on the lines you were following?

Ans. No sir I did not.

Que. On which sides were these chestnut oaks marked?

Ans. I think mostly on the south side.

Que. Were you following the line with a compass?

Ans. No sir.

Que. Did you hunt the country over in that neighborhood for marked trees?

Ans. We hunted for marked trees as far as we went to the Race Fork.

Que. In which direction did you come to the Race Fork?

Ans. Well I think it is a little *grain* north-east from where we started.

Que. Did you notice any little drain in that locality at the

time or pay any attention to it—that is in the locality of the poplar?

Ans. We come off the mountain right down that drain to it.

Que. What direction does that drain flow a short distance from the creek.

Ans. North-west as well as I can get it in my head. I may be wrong as it may be nearly due west as I cant tell exactly, the way it heads up. I misunderstood the question the drain runs east or a little south of east I think is the way it runs.

Que. Did you notice particularly the points of the compass at that time?

Ans. Yes sir. I know all right. I *dident* have no compass but I know north, south, east and west and I noticed how it was marked the range if it was marked running north. I generally look at a tree and can tell the north side of a tree as it has moss on it. I never got lost in this country but I have in the western country been bothered in the woods.

Que. Can you *described* the *appeaaence* of the bark on this tree *whetherer* it was rough and ragged or whether it was smooth?

Ans. Well it *wasent* very smooth and it *wasent* very rough as well as I remember.

Que. Did you ever hunt for marked trees before or since?

Ans. O yes I have hunted for marked trees before and since but not around there.

Que. Where have you hunted?

Ans. On the Rock Lick fork and the Paw-Paw Fork—at the head of it.

Que. Did you find any on Paw-Paw?

Ans. I found marks of a line to the land belonging to my wife I was a hunting for.

Que. Did you find any of the corners?

Ans. Yes sir.

Que. What sized tract was that?

Ans. There was two parties had it in the survey and there was 513 acres in the survey and it belonged to my wife and J. N. Watkins.

Que. What corners did you find on that?

Ans. I found two beeches.

Que. How were they marked?

Ans. With three hacks for corner.

Que. In what direction or on what sides?

Ans. On the south side and the west side.

Que. Where does that corner stand?

Ans. It stands about one hundred yards from one fork of Paw-Paw..

Ans. That is a corner to the 513 acres.

Ans. Yes sir that is a corner to it.

Que. There is a good deal of marked timber around through that country?

Que. Not very much I have seen none but what is marked for lines and corners I have hunted and *dident* see any marked timber except those lines. Some places they have saw timber marked but they *havent* any marked in there.

page 122.] Que. How far apart were the marks on this poplar?

Ans. I cant tell you how far they were but they were some distance.

Que. Well as near as you can tell.

Ans. I *dident* draw my attention to it.

Que. Cant you recall from the appearance and state how far apart the marks were?

Ans. I cant do that I cant tell how far they were.

Que. Were they plain or indistinct?

Ans. The marks were plain to me.

Que. *Isent* it very common to see trees hacked along the creeks and trails in Buchanan County?

Ans. Yes I have seen a good many trees hacked.

Que. Do you live on a part of this 513 acres?

Ans. No sir.

Que. How far do you live from there?

Ans. About three miles.

Que. How far do you live from John S. Dotson on Paw-Paw Creek?

Ans. Well I think it some over three miles and a half it may be three and three quarters.

Que. How long have you known him?

Ans. I have known him ever since he was a boy—ever since before he was grown

Que. Do you know John H. Dotson?

Ans. Yes sir.

Que. When was your attention first called to these trees lately?

Ans. I *havent* seen the poplar and beech or drawed any attention since I told you—since that time I was there the second time, I *havent* been there since.

Que. I mean when was the fact of your having seen them brought to your mind, and by whom?

Ans. They *wasent* brought to my mind by no one I seen them.

Que. I mean who have you talked with lately about having seen them?

Ans. Well I haint talked with no one I have heard that when I was gone Miles Lester came to see me about having seen the timber that was the first I have talked about it. Since that time —over a week ago—a few talked to me about. Shade Lee talked to me about—he is a brother-in-law of Miles Lester and he told me that Miles had come to see me about these trees.

Que. Did you ever hunt any corner trees or line trees at any other time than the two instances you have mentioned?

Ans. Yes sir I have.

Que. Did you find them?

Ans. I found some and some I *dident.*

Que. Do you remember what ones you found?

Ans. No sir I dont know I have found so many I could tell you what ones *ones* I found.

Que. Can you tell how those were marked that you did find?

Ans. I can tell you how one was marked that I did find one was marked north and the other was marked south. One side was marked north and the other was marked south—I may be mistaken it may have been marked a little east of north. I have got the patent but forget what the calls are. I dont know exactly the degree it runs.

Que. Is that the only one you remember now to give the way it *wwas* marked?

Ans. I know of another one—a poplar. It is marked to run one part runs south but I dont know exactly the degree and the other part runs west but I don't exactly the degree.

Que. Is that one of your corners?

A. Yes sir.

page 123.] EXAMINED

By the commissioner.

Que. Was this poplar you saw marked on the Race Fork of Knox Creek on the side next to the creek or on the side next to the drain?

Ans. I dont remember. I *wasent interested* in it and just *though* it was Jonathan Hurley's corner but *dident* know just made up my mind that way.

Que. Was this tree in the bottom or on the hill side?

Ans. I cant say whether it was on the hill side or in the bottom it was right along there some wheres.

Que. Did Miles Lester see *thes* trees?

Ans. Yes sir.

RE-EXAMINED

By Mr. Campbell.

Que. Give us your best impression as to how far up this little drain this poplar stood from Right Fork of Race Creek?

Ans. I can't say how far it was and I won't say as I never

drwed my *my* mind to it. I know I seen the trees but it *wasent* the corner I was looking for.

RE-CROSS EXAMINED

By Mr. Stiles.

Que. You won't undertake to say for certain upon what side or sides the tree was marked will you?

Ans. I will say this I know it was marked on the one side on the north side facing over towards Jonathan Hurley's as he lived north of there and I supposed it was his corner. He owned land on Race Fork,—he did one time, below there and I thought it might run up that far I *dident* know. Hurley had surveyed in there a good many years ago, he is now dead.

And further this deponent saith not.

(Signed) GEORGE FULLER.

Witness claims 1 day and
84 miles travel.

page 124.] HIRAM M. SMITH, a witness introduced in behalf of the contesting defendants, after being first duly sworn upon oath testified as follows:

EXAMINED

By Mr. Sheppard.

Que. State your age, residence and occupation?

Ans. Age, my age was given in to me that I was born about the year 1856 I live in Pike County Kentucky on the water of Paw)paw fork of Knox creek; occupation farmer.

Que. How long have you been acquainted with the Race Fork and Paw-Paw Fork of Knox Creek?

Ans. Off and on for about twenty six or twenty seven years.

Que. Do you know the little drain that empties into the Right Fork of the Race fork where Daniel Justice now lives and just immediately above where he formerly lived?

Ans. Yes sir I know where he formerly lived and know

about the drain I don't know where he now lives as they say he has moved.

Que. State whether or not you knew that drain by any name?

Ans. We called it—me and my *cousing* followed *sanging* there—we called it the Paw-Paw Fork of Race. It leads across towards the Paw-Paw Fork.

Que. Is that the drain at the mouth of which, you understand, Daniel Justice now lives?

Objected to by the defendant King.

Ans. John Lester told me that Daniel had moved away from there and he *dident* tell me where he lived.

Que. Where is this drain you speak of with reference to where Daniel Justice lived when you were last there?

Que. It was right near where he lived. I think it was just above his house or it might be below I *don't* remember which but it was right near to where he lived though.

Que. Where is the drain with reference to the sulphur spring on Race Fork?

Ans. It is above the *sulpher* spring I think it was, but I *don't* recollect exactly.

Que. Did you ever see any marked timber near the mouth of that drain?

Objected to by the defendant King.

Ans. Yes sir.

Que. How many marked trees did you see and what kind were they?

Ans. I saw an oak and beech near that sulphur spring. I saw a poplar marked with three hacks on one side up in the side of that there little drain that I am talking about, and a beech with two hacks, as well as I recollect it.

Que. On which side of the little drain were these trees?

Ans. On the left hand side going up the drain.

Que. On which side of the Right Hand Fork of Race were they?

Ans. On the right hand side of the right hand fork going up.

Que. What was the *appearence* of the hack marks as to age?

Ans. They looked to me like they was a right smart old.

Que. What sized instrument did they *sem* to have been made with?

Ans. With a narrow looking instrument of some kind.

Que. In what direction did the marks on the poplar face?

Ans. I looked at the marks on the poplar and they looked as if they might sorter go in the direction of the sulphur spring.

Que. Is the sulphur spring below or above the point where you saw the marked poplar and beech?

Ans. I think it is below to my remembrance.

Que. Where is the sulphur spring you speak of with reference to the Right Fork of the Race Fork?

page 125.] Ans. It lays on the right hand side of the right hand fork of Race Fork going up. As well as I remember it is about six or eight steps along there from the edge of the creek.

Que. In what direction did the marks on the beech face?

Ans. I don't remember how they did face.

Que. How long ago was it that you saw these trees?

Ans. It has been ten or eleven years ago.

Que. Have you ever paid any attention to the trees or the place where you saw them since that time?

Ans. No sir I *havent.*

Que. What were you doing there at the time you saw the marks on the trees?

Ans. I was *sanging.*

Que. Was there any one with you?

Ans. James M. Charles was with me.

Que. Do you remember whether he was at the trees and whether you called his attention to the marks or not?

Ans. I do not.

Que. How did you happen to notice the direction that the marks on the poplar faced?

Ans. We had been at the sulphur springs me and James M. Charles, and saw those trees marked there—the oak and beech and when I *say* those trees up there marked I looked back to see if they was on a line with the trees at the sulphur spring.

Que. Did it appear to you then that the marks on the poplar faced in the direction of the sulphur spring?

Objected to by the defendant King.

Ans. I *couldent* tell whether it did not exactly because there was a cluster of timber between me and the spring.

Que. Did you look to see if any other trees near the poplar and beech were marked?

Ans. I did not near that. I saw a cucumber on the ridge still above that was marked.

Que. How far from the poplar was the marked cucumber?

Ans. It must have been one hundred *yars* or more I don't remember now how far.

Que. Where did the beech stand with reference to the poplar and the Right Fork of Race?

Ans. It stood between the right hand fork of Race Fork and the poplar, is my recollection.

CROSS EXAMINATION

By Mr. Stiles attorney for H. C. King.

Que. How were the oak and beech marked?

Ans. The oak tree had three marks on each side as well as I recollect—three marks in a place, three marks on one side and three on the other and the beech had two marks as well as I recollect.

Que. How far were they from the poplar and beech?

Ans. I don't recollect how far it is. They were at the sulphur springs we have been talking about—near about the sulphur springs.

Que. What was the *appearance* as to the marks on the oak and beech as to age, were they old or new?

Ans. The marks that was on the oak looked very plain like that they *wasent* as old as the marks on the beech. The beech marks had kind of grown worse than the marks in the oak, they *dident* look so plain as they did in the bark on the oak to me.

Que. Did they look just about the same as the marks on the other beech?

Ans. As well as I remember the marks were a little larger on that beech—the beech at the sulphur spring, than they were on the other beech.

Que. Did they seem to have grown more than the marks on the other beech?

Ans. I don't know that they did but they seem to me that the marks were a little bit larger—that is that the blade of the tool was a little bit wider than that which marked the beech near the poplar.

page 126.] Que. About how long were the marks on either of the beeches?

Ans. The marks on the beech on the hill side that we have been speaking of in that drain looked about something like about three inches or hardly so much. The other beech the marks were some longer in *appearence* they had growed over some.

Que. Are you familiar with marked trees—corner marks, and if so to what extent?

Ans. I have been acquainted with marked trees for twenty four or five years and owned some of them myself.

Que. Have you examined this poplar block on the table that was filed by Mr. Stone as having been taken out of a tree on Knox Creek?

Ans. I have some what examined it.

Que. When was that and where?

Ans. The first time that I saw the block to my recollection was out there a while ago.

Que. Out where?

Ans. Out yonder in Mr. Shepards office.

Que. Are you sure whether the drain was above or below the sulphur spring?

Ans. No I aint sure.

Que. You are not sure whether the marks on the poplar faced towards the spring?

Ans. I *couldent* tell exactly whether they did or not. I looked to see and *couldent* tell.

Que. You spoke of John Lester having told you that Daniel Justice had moved when did he speak to you about this?

Ans. He spoke to me some time ago about it. I think it has been about two weeks—something close that time.

Que. Who is John Lester?

Ans. John Harrison Lester is his name/he is said to be a son of Levi Lester and a brother-in-law to Daniel Justice.

Que. He was talking to you about some marked trees in that neighborhood?

Ans. Yes sir.

Que. It is rather a common experience to run across marked trees while "*sanging*" is it not?

Ans. Yes sir.

Que. You can't say whether the beech near the drain was marked with more than two hacks or not or on more than one side?

Ans. That is all I saw was two hacks on it.

Que. When was your recollection first recalled to these trees within the last year or so?

Ans. About two years ago me and some parties were talking about some marked timber through that Race Fork country I am talking about, I told them that I knew of several marked trees in that country.

Que. Who were you *taking* with?

Ans. I was talking with one of my sons and two of my

brothers. *There* names are Joseph Frankling and John Silas Smith, both my brothers and John Harrison Smith my son, us four were talking together. We was talking about a piece of land on Race Fork which we supposed to belong to John Watkins.

RE-EXAMINED

By Mr. Shepard.

Que. Did the marks on the poplar face in the general direction up or down Race fork?

Objected to by the defendant King.

Ans. As well as I recollect they faced like they was cross angling across Race Fork. My remembrance now is that they faced towards a little to where I thought that sulphur spring was I *couldent* tell that they was a going to that sulphur spring but they was a going in that direction as I thought.

Que. How did the marks on the poplar as you remember them compare in age and length to the marks in
page 127.] the block on the table referred to in your cross examination.

Ans. They looked to have been cut with about as wide a tool as these marks were made with—about that size. They seemed to look very old to me—they were not fresh marks.

RE-CROSS EXAMINED

By Mr. Stiles.

Que. Do you think you could tell the difference between a mark that had been made fifty or sixty years and one that had been made thirty or forty years?

Ans. I don't know whether I could or not.

Que. You would call them old marks and let them go at that?

Ans. Why if they look old I would say that they look old.

By the commissioner.

Que. How high were those marks in the poplar above the ground?

Ans. They *wasent* very high I don't recollect how high they was.

And further this deponent saith not?

his
HIRAM M. x SMITH.
mark

Witness claims one day and
70 miles travel.

It is ordered that these proceedings be now adjourned until tomorrow morning at the same place and to commence at eight o'clock, A. M.

J. T. GRAHAM.

page 128.] Friday May 23rd. 1902. Met pursuant to adjournment on yesterday.

Present: The same parties as on yesterday.

The Commissioner having stated that it would be necessary for him to adjourn his proceedings in this cause until the 5th. day of June 1902, on account of professional engagements in court, the contesting defendants hereby give notice that they will take the testimony of perhaps three witnesses on the 5th. day of June 1902. at which time they will close their evidence on the question of location of the tract of land known in this cause as the "King" tract and that they will expect and insist upon the defendant King proceeding with his testimony upon the question of location on the 6th day of June 1902 and upon his failure so to do the contesting defendants will insist upon the Commissioner making up and filing his report upon the question of location of the King Tract; it being the desire and intention of the contesting defendants to proceed to the conclusion of the evidence on the question of location without out further suspension of proceedings and as rapidly as the evidence can be taken.

Counsel for Mr. King states that he knows of nothing that gives

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to the so-called contesting defendants the right to control the action of the Commissioner or of the defendant King in these proceedings, and that the said contesting defendants having devoted the time from August 1901 to the day set for taking the testimony herein to the prosecution of surveying and exploring the portions of the land claimed by the defendant King but situate outside of the State of West Virginia and not in controversy in this case, which surveying and investigation, although intended for the purposes of this case as shown by the record, was done in secret, without notice to the defendant King and without an order of survey, the defendant King gives notice that before entering upon the taking of evidence in rebuttal to that introduced by the contesting defendants he will move that an order of survey be made and that he be afforded opportunity to do such surveying as he may be advised is necessary or proper. And that he further states that as a large portion of the land mentioned in his petition herein is not effected

page 129.] or is not claimed by the so-called contesting *defendats* in their so called answers filed herein and nothing is required to be done concerning the same except to ascertain the amount of taxes interest and cost thereon, the said defendant King will request that before undertaking to pass upon the *controversys* between the defendant King and the so-called contesting defendants the Commissioner proceed to ascertain such taxes interest and cost upon such portion of the in order that the defendant King may settle and pay the same and that he like wise proceed to ascertain the taxes interest and costs upon the residue of the land claimed by him in his said petiton with a view to a like payment and settlement thereof.

Counsel for the contesting *defndants* in reply say:

1st. They are exercising their legal rights to insist upon a speedy determination of a question in which they are vitally interested.

2. The statement that they have devoted the time from August 1st. 1901 until the day set for taking testimony to survey and explore lands mentioned in the statement of counsel is not true; they have had some surveying done which was their right and which was

known or could have been known by reasonable *dilegence* to the agents and attorneys of Mr. King.

3rd. The statement that the surveying done by the *by the* contesting defendants was done in secret is false; it was done openly by a *corpse* of engineers and without the slightest effort to conceal the fact that it was being done and *consel* for contesting defendants were advised about the month of September 1901 that defendants King's agents and attorneys were fully aware that the surveying was being done and investigations had been made as to the southwestern corner of the King tract.

4th. An order of survey is not necessary; the defendant King has had his engineer on the witness stand and has had ample time to have him make further investigation if desired.

Counsel for King *replys* that if counsel for contesting defendants, that the counsel for Mr. King was informed that they were doing any surveying as aforesaid they were misadvised, as such was not the fact.

It is *order* that these proceedings *by* now continued until the 5th. day of June 1902, to meet at Williamson, West Virginia, on said day at 8 o'clock, A. M.

J. T. GRAHAM,
Commissioner

page 130.] Williamson, West Virginia,
June 5" 1902.

Met pursuant to adjournment on May 22nd.

Present: The State of West Virginia by Samuel Miller her attorney; Campbell, Holt and Duncan and Shepherd & Goodykontz attorneys for the contesting defendants and the defendant H. C. King by M. F. Stiles his attorney.

JOHN CHARLES, a witness introduced in behalf of the contesting defendants, after being first duly sworn upon oath testified as follows:—

EXAMINED

By Mr. Campbell.

Que. State your age, residence and occupation

Ans. Age 68 years, residence, Peter Creek, Pike County, Kentucky and by occupation a farmer.

Que. Are you acquainted with the country lying on the Race Fork of Knox Creek, in Buchannan County, Virginia? If so how long have you known that part of the country?

Ans. I think I am. I have known that part of the country ever since near about 1858. I used to *sang* in there.

Que. Do you know the place where Daniel Justice now lives on the Right Fork, of the Race Fork of Knox Creek?

Ans. Just hear-say, I have never been there since he moved. I dont know just exactly where he lives, just what I have heard is all I know.

Que. Are you acquainted with the Low Gap Fork of the said Right Fork of the Race Fork of Knox and the little drain coming into the right fork below the Low Gap Fork?

Ans. Yes sir I know what they call the Low Gap Fork. I know the first drain that comes in below.

Que. From which side of the Race Fork does the little drain and Low Gap Fork come in—right or left as you go up the Race Fork?

Ans. On the right hand side as you go up.

Que. About how far does the small drain come in below the mouth of the Low Gap Fork?

Ans. I expect it is *mayby* one hundred and fifty to two hundred yards

Que. State if you ever saw any marked trees on or near this small drain, if so state about how long ago was it that you saw marked trees?

Ans. Yes sir I saw two trees I expect it has been twenty years or upwards since I noticed them.

Que. What kind of timber were these two trees?

Ans. Sugar tree and a poplar.

Que. On which side of the Race Fork did they stand—right or left as one goes up the stream.

page 131.] Ans. On the right side.

Q. About how far up from the Race Fork did they stand?

Ans. I expect it was about one hundred and fifty yards it might have been more or it might have been less I am just guessing at it.

Que. On which side of the small drain did these two trees stand—right or left as one goes up the drain?

Ans. Left.

Que. Give us your best impression as to how far these trees stood from the little drain?

Ans. It *wasent* very far it was but a little piece is my recollection at this time. I dont think it was over twenty-five or thirty yards and maybe not that.

Que. How were these two trees marked?

Ans. Well sir they were marked sorter from the creek on the lower side of the tree towards the creek.

Que. Were they marked on any other side?

Ans. Yes sir—both sides. The other marks were like they were kind of quartering across the hollow a little up so as to cross the little drain a little.

Que. How many hacks did the trees have on each side?

Ans. Three on each side sir.

Que. Were they both marked on the same sides?

Ans. Yes they were both marked on the lower side and on the upper side kind of quartering across the hollow as I told you.

Que. What was the size of the hacks?

Ans. It looked like it might have been a hatchet—small hacks.

Que. What was the appearance of the hacks as respect to age?

Ans. Well they looked like they had been several years from their looks—It looked like it had been done a right smart while.

Que. Do you know to what survey they indicated a corner?

Ans. They were corners is all I can tell I dont know that they were corners to any survey at all, some one else might have hacked

them for what I know. It was hacked like a corner and I thought it was a corner to the Coleman survey—that is what I thought at the time.

Que. What were you doing in there at the time you discovered these two trees?

Ans. Cattle hunting.

Que. Did you notice any other marked trees there besides the poplar and sugar?

Ans. No sir.

Que. Did you examine any of the other trees there to see if they had marks on them?

Ans. No sir. I paid no attention to the trees.

Que. State if there was any one with you at the time?

Ans. My wife was with me.

Que. Is she still living?

Ans. Yes sir.

Que. Do you know whether she remembers whether she saw the marks on the trees.

Objected to by the defendant King.

Ans. She says she did.

CROSS-EXAMINED

By Mr. Stiles attorney for King.

Que. Did you ever see any other marked trees at any place while you were cow hunting or traveling thro' the timber?

Ans O, I might have seen some but I dont recollect about it now as it has been a long time ago I believe I did see one nearly at the mouth of Race Fork but that was one of Jonathan Hurley's survey.

page 132.] Que. Do you remember how that tree was marked?

Ans. That was marked on the upper side quartering towards what we call the Bear Wallow hollow.

Que. Do you remember any other trees in that locality?

Ans. No I think not.

Que. But you probably have seen a good many have you not at different times?

Ans. I dont recollect now—not on that stream of water I dont.

Que. How lately have you been at the place where you saw the poplar and sugar tree?

Ans. It has been upwards of twenty years I reckon since I saw them I never saw them but once and that has been over twenty years ago.

Que. Have you been at that place since that time?

Ans. I have passed thro' the country there regular but I *havent* seen those trees to my recollection.

Que. Did you at the time pay special attention to the way they were marked?

Ans. Yes sir I seen which way they was marked.

Que. Are there not a great many little drains coming into the creek at different places?

Ans. I suppose there is plenty of them.

Que. Is there any thing about the one you have mentioned to fix it particularly in your mind?

Ans. Yes sir the drain that I am speaking of is the first one below the fork—that is the drain that these marked trees are in—the low Gap Fork.

Que. Had you often thought of or called these trees to mind during the past twenty years?

Ans. I never paid no attention to the trees until I heard them talking about them; they asked me if I knowed of such trees and I told them I did.

Que. Did they describe where the trees stood and how they were marked?

Ans. No—They asked if I knowed of any marked trees up there that looked like a survey and I told them I did know of a poplar and sugar tree marked. I was well acquainted with the country and lived up there—on the creek part of the time and for many years lived on the—Pounding Mill Fork. I thought it was a corner to the Coleman survey.

Que. On what part of Race Fork did you live—how far from the mouth?

Ans. About two miles I reckon up the Race Fork.

Que What Coleman survey do you refer to?

Ans. I thought it was the Dennie Coleman survey.

Que. Do you mean the Daniel R. Coleman.

Ans. No sir I mean Dennie Coleman who got killed during the war; he lived at Home Creek at the time he had this survey run out.

Que. Do you remember the size of that Coleman survey?

Ans. Oh, I dont know the size for I expect he had four or five thousand acres—is my recollection of it.

Que. Do you know who claims it now?

Ans. Watkins got a part of it I think and two of the Justices got part of it, and Stuart, is my understanding got a part of it I think it was Henry Stuart.

Que. Did you know Coleman.

Ans. Oh, yes I was well acquainted with him.

And further this deponeth saith not.

his
JOHN X CHARLES,
mark

Witness claims
1 day and 42 miles travel
Witness' mark

J. T. Graham, Commissioner.

page 133.] CALVIN LESTER, a witness produced in behalf of the contesting defendants, after being first duly sworn, upon oath testified as follows:

EXAMINED
By Mr. Campbell.

Que. State your age, residence and occupation?

Ans. Age about fifty seven or fifty eight years, I reside in Pike County, Kentucky on the Paw-Paw Fork of Knox Creek, and by

occupation farmer—that is what little occupation I do follow is farmer I *I* have a crippled hand and *cant* do much.

Que. How long have you lived on the waters of Knox Creek?

Ans. I was raised there ever since I can recollect.

Que. Are you acquainted with the country on the Race Fork of Knox

Ans. Yes sir.

Que. Do you know where the Low Gap Fork of the Right Fork of Race Fork is and also the first small drain below there coming in from the right hand side as you go up?

Ans. I suppose I do sir.

Que. Have you been there since Daniel Justice built?

Ans. I have not.

Que. How often have you been in that part of the country on the Right Fork of Race in the neighborhood of this small drain and the Low Gap Fork?

Ans. I *couldent* specify but I have been in there a good many times; I camped there—up in that little drain a little piece—about fifty yards from the main branch, about two weeks.

Que How long since did you camp there and what were you doing at that time?

Ans. I *couldent* specify but it has been eight, or nine or ten years, I was *sanging* at that time.

Que. State who was with you at that time?

Ans. My children—two boys and one girl and it appears to me that there was another chunk of a boy with us but I dont remember who he was I now recall it was John Henry Lee.

Que. How old were your three children that were with you?

Ans. One of the boys was about thirteen or fourteen and the girl was about eight—I expect she was about nine and the other one I expect was about seven or eight.

Que. How old was John Henry Lee and where is he now?

Ans. About nine years old I reckon—he is in Washington State—at Verndale and sometimes Mossy Rock.

Que. Where do your two boys live?

Ans. They live on the head of Paw-Paw—one of them does

and the other one lives down just above the forks on the forks that runs towards Mill Creek.

Que. Where is your daughter?

Ans. She married Frank Beevers and she moved off last Monday towards Matewan.

Que. State what experience, if any, you ever had in land surveying and what part of the work you did?

Ans. I generally carried the chain and have been marker part of the time.

Que. State if you ever saw any marked timber trees on the Right Fork of Race, near where you were camping eight or ten years ago, while *sanging?*

Ans. I saw a poplar, sugar tree and one beech marked—I supposed the poplar and sugar tree was marked in the shape of a corner and the beech was marked for a side line.

Que. How many hacks wos on the beech?

page 134.] Ans. Two was all I noticed.

Que. On how many sides were the poplar and sugar marked?

Ans. Each one was marked two ways.

Que. How many marks each way?

Ans. Three on each side.

Que. What was the size of the hacks on the poplar, sugar and beech?

Ans. It looked like it had been done with a small like hatchet or ax one if it was it was a mighty small narrow bladed one.

Que. How did these marks look as respects to their age?

Ans. They looked to be pretty old from the *appearance* of their age—one of them—the lower hack on the poplar was pretty hard to discover on one side—the other side was very *visable*.

Que. What was the condition of the sugar tree?

Ans. It seemed to be very old and it seemed to me like it was a stooping tree and if I *aint* mistaken the top was out and was hollow at the bottom as well as I recollect.

Que. On which side of the Race Fork did these trees stand, as one goes up the stream?

Ans. On the *Right* hand side of the main fork.

Que. About how far from the fork?

Ans. That I *couldent* specify but as I recollect it seemed to be about one hundred yards above where I was camped in there and I was camped forty or fifty yards from the creek.

Que. On which side of the small drain did they stand and on which side of the drain?

Ans. On the left hand side going up the drain.

Que. About what distance from the drain?

Ans. Well I *couldent* specify that it has been so long but they *wasent* very far. I recollect the beech being right on the brink of the drain, I walked around that way and stepped across a little hollow or drain—it is just a small drain like.

Que. In which direction did the hacks on the sugar and poplar point with reference to the little drain and also with reference to the Race Fork?

Ans. The hacks on that side—on the left side would have run across the hollow—that is across the main right fork—that is the main Race Fork; the others pointed up and across the little drain

Que. Did you examine any other trees in that immediate locality to see if they were marked?

Ans. I did not; those three are the only ones I paid any attention to at that time.

Que. On what kind of ground was your camp pitched and on what side of the small drain?

Ans. On a small flat like place at the mouth of the little drain on the right hand side as you go up the drain.

Que. Where was your camp with reference to the little flat knoll or bench at the mouth of said drain?

Ans. Right on that at the side of a large white oak.

Que. Do you know whether either of your boys or your daughter saw these trees and the hacks on them?

Ans. One of them Curtis C. Lester, did

Que. Did John Henry Lee see those marks.

Ans. If he did I dont know it. Curtis and I were *sanging* together and we come down by them and the other boys *sanged* down

ac other side of the fork and were at the camp when we ca.. ..own by the trees.

page 135.] CROSS-EXAMINED
By Mr. Stiles attorney for King.

Que. How many times did you pass or see these trees in the two weeks you were camped there.

Ans. I *couldent* specify how many times but several times when I was passing backwards and forward?

Que. How far apart did the poplar and sugar tree stand?

Ans. I *couldent* specify but tolerable close though, ten or twelve feet it might have been a little further and then not so far but it seems to me like it was that.

Que. Which stood nearer the drain?

Ans. The sugar as near as I recollect.

Que. And about how far was it from the drain?

Ans. Well I *couldent* specify that it was some where along about thirty or forty feet—it was a short distance I know

Que. About what size was the poplar?

Ans. From two feet and a half to three feet through as well as I recollect—it was a pretty large poplar.

Ans. Was any of the ground around these trees cleared or any of the timber cut away?

Ans. No sir not at that time.

Que. How large was the sugar tree?

Ans. It might have been two feet it was a right smart chunk of a sugar tree.

Que. What makes you think the top was broken off?

Ans. Well up in it about fourteen or fifteen feet was a squirrel hole and I said to the boy that it would be a nice place for bees and he said that it would rain in on them as the top was broken out.

Que. Where did the beech stand in relation to the poplar?

Ans. Down below

Que. About how far?

Ans. Well I expect it was about thirty or forty yards—somewheres along there it *wasent* very far I know.

Que. Have you ever been to this place since you camped there?

Ans. Yes sir once or twice? I recollect twice I passed there since

Que. Did you notice these same trees at those times?

Ans. I did not—I was in a hurry both times.

Que. Did you notice any other trees of any size near the poplar and sugar tree?

Ans. It was pretty heavily timbered all around there—it was tolerable thick timbered—some was large and some was small.

Que. Was there any large timber of any kind down near the bank of the Creek and near the mouth of the drain on either side?

Ans. On the fork *Knoll* just below where I was camped there was a big chestnut and white oak near the main creek—the white oak stood right where I was camped.

Que. Do you remember any other large timber along near the main creek in that neighborhood.

Ans. There was a large oak on the main *dFork* just above the mouth of the little drain.

Que. There was other large timber close along the creek in that immediate neighborhood?

Ans. Yes it was *tolerbly* thick timbered

And further this deponeth saith not

Witness claims 1 day
and 54 miles *tracel*

his
CALVIN X LESTER.
mark

Witness' mark

J. T. Graham, Commissioner.

page 136.] By consent of the parties it is ordered that these proceedings be adjourned to Delorme, Mingo County, West Virginia, to meet at said place on Friday, June 6th. 1902, at 1 o'clock, P. M.

J. T. GRAHAM,
Commissioner.

Delorme, West Virginia, June 6th, 1902.

Met pursuant to adjournment at Williamson on yesterday. Present same parties as on yesterday.

MRS. SARAH CHARLES, wife of John Charles, a witness introduced in behalf of the contesting defendants, after being first duly sworn upon oath testified as follows: —

Que. State your age and place of residence?

Ans. Age 63 years; and reside on Peter Creek Pike County, Kentucky.

Que. What relation are you to John Charles?

Ans. I am his wife.

Que. Did you ever live on the Race Fork of Knox Creek in Buchannan County, Virginia?

Ans. Yes sir.

Que. How long did you live there?

Ans. As well as I recollect it was close about two years I can't remember.

Que. Did you ever live on Paw-Paw Fork of Knox, if so how long?

Ans. No sir I never lived on Paw-Paw.

Que. Were you married to John Charles at the time you were living on the Race Fork of Knox?

Ans. Yes sir.

Que. Where did you move from there and how long did you live at that place?

Ans. When I left that place I moved back to Kentucky—Pike County.

Que. Did you ever live on Pounding Mill of Knox, if so how long?

Ans. Yes sir as well as I can recollect about six years.

Que. Do you remember of ever seeing any marked timber trees on the Race Fork of Knox Creek, if so who was with you at the time and who pointed them out to you, if any one?

Ans. Yes sir I remember a little about it and John Charles was with me and showed them to me.

Que. What were you and your husband doing at that time at that place?

Ans. We were looking after some cattle.

Que. How long ago has that been?

Ans. Well I can't remember exactly,—it has been fifteen or twenty years ago.

Que. How many and what kind of trees were pointed out to you by your husband at that time?

Ans. They were three trees; they was two poplars and a sugar tree of a beech and I wont say which.

page 137.] Que. How many hacks did these trees have on them if you remember?

Ans. I remember of seeing three hacks on one tree—the nearest one to me and I *dident* pay any attention to the others.

Que. Can you state the locality where you saw these trees?

Ans. They were very near the mouth of the Low Gap Branch.

Que. Were they on the same side of Race Fork?

Ans. It seems to strike my mind they were on the same side.

Que. Were they below the Low Gap Branch, and if so about how far below?

Objected to by defendant King as suggestive.

Ans. I can't remember, I have been studying but I can't remember. I can't get that on my mind about where but I *remembering* of him showing them to me and telling me they were corner trees and that is all I can remember about it.

Que. How long has it been since you were on the right fork of Race Fork?

Ans. About two years.

Que. Were you up to where Dan Justice now lives, within two years?

Ans. No sir I *havent* been there for ten years as well as I recollect if not longer?

Que. When you were shown those trees was there any thing said by your husband at the time about any body surveying or

that these trees were the corner of any surveyor, if so state what was said?

Objected to by defendant King.

Ans. Yes sir he said they was corner trees but don't remember of what survey.

CROSS EXAMINATION

By Mr. Stiles attorney for King.

Que. You have seen a good many corner trees and other marked trees in that country have you not?

Ans. Well likely I have.

Que. Do you remember any other particular trees—corner trees that you have seen years ago?

Ans. No sir I don't.

Que. Are you positive whether there was more than one poplar that was marked?

Ans. No sir I aint.

Que. You said you only noticed marks on the tree nearest you do you remember whether that was on the poplar or on the beech or on the sugar tree which ever it was?

Ans. As well as I recollect it was on the poplar.

And further this deponent saith not.

her
SARAH x CHARLES.
mark.

Witness claims 1 day and
10 miles travel—$1.50
paid by contesting defendants.
Witness mark J. T. GRAHAM.

page 138.] It is ordered that these proceedings be now adjourned until tomorrow morning at the same place.

J. T. GRAHAM,
Commissioner.

Saturday June 7th. 1902: Met pursuant to adjournment on yesterday.

Present: The same parties as on yesterday.

No witnesses appearing it is ordered, and by consent of the parties that these proceedings *by* adjourned until Saturday June 14th. 1902, to meet at the office of the Commissioner, on said day, at his office in the city of Huntington, Cabell County, West Virginia, at 9 o'clock, A. M.

J. T. GRAHAM,
Commissioner.

page 139.] Huntington, W. Va., June 14" 1902

Met at the office of the Commissioner in the city of Huntington, West Virginia, pursuant to adjournment on the 14th. inst. Present. C. W. Campbell, of counsel for the contesting defendants and M. F. Stiles, attorney for the defendant H. C. King.

It is ordered that these proceedings be continued until Monday, June 23rd. at the same place.

J. T. GRAHAM,
Commissioner.

Huntington, W. Va., June 23rd, 1902

Met at office of commissioner pursuant to adjournment on the 14th. inst. Present C. W. Campbell and John A. Shepard, attorneys for the contesting defendants and M. F. Stiles attorney for the defendant H. C. King.

Thereupon the attorneys for the contesting defendants moved the commissioner to close his proceedings herein, so far as the taking of testimony upon the question of the location of the King grant is concerned and make and file his report upon said location of said tract of land. Which motion was opposed by the defendant King and upon consideration of which the same was overruled by the commissioner. Thereupon the contesting defendants moved that these proceedings be proceeded with on Friday or Saturday of the present week, but for reasons appearing to the commissioner

he being so situated that it would be impossible for him to be present and proceed, on either of said days, said motion is overruled and *and* the matter is continued until Monday June 30th. 1902, to meet at Welch, in the County of McDowell, West Virginia, at 10 o'clock A. M., for further proceedings herein.

J. T. GRAHAM,
Commissioner.

page 140.] Monday June 30th. 1902.

The Commissioner being so situate that it is impossible for him to proceed it is ordered that these proceedings be adjourned until Wednesday, July 2nd. 1902, at Welch, West Virginia.

J. T. GRAHAM,
Commissioner.

Welch, West Virginia, July 2nd. 1902.

Met pursuant to adjournment on Monday. Present: Attorneys for contesting defendants and M. F. Stiles for defendant H. C. King.

ROBERT JUSTICE, a witness introduced in behalf of the contesting defendants, after being first duly sworn upon oath testified as follows:

EXAMINED
By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age about 37 years, reside in *Buchanan* County Virginia on Home Creek on Levisa River and by occupation farmer.

Q. Are you acquainted with the location where Daniel Justice *Now* lives on the right fork of Race Fork of Knox Creek?

A/ Yes sir.

Q. When were you there last?

A A week or two ago maybe three weeks.

Q. Did you do any work there this summer, if so how many days did you work?

A. Yes sir I done a little work there I worked two or three days I reckon along in the spring and in the summer *to*.

Q. What kind of work were you doing?

A. I hoed corn a little and helped to clear some.

Q. For whom were you doing that work?

A. Daniel Justice.

page 141.] Q. Had you ever been to that location before Daniel Justice settled there and cleared that field around the house?

A. Yes sir.

Q. State whether you ever saw any marked trees at that location if so state what kind of trees you saw?

A. Yes sir I *seed* two poplars—marked trees.

Q. Who was with you at that time?

A. Wesley Justice.

Q. Is he living or dead?

A. He is dead.

Q. How long has he been dead?

A. Something like two years I reckon.

Q. What were you and Wesley Justice doing at the time you saw these marked trees?

A. He was a cattle hunting and I was a *sanging* about in there.

Q. About how long ago was it that you and Wesley Justice saw these trees?

A. It has been about seven or eight years as well as I can remember at this time.

Q. On which side of the Race Fork did these trees stand—right or left going up the stream?

A. It was on the right hand side of the main Race Fork and on the left of the little hollow where Daniel lives.

Q. About how far from the Race Fork did they stand?

A. I *couldent* tell how far it is two hundred yards or more.

Q. About how far did they stand from this little branch or hollow as *yo* call it?

A. It *wernt* very far I *couldent* state the distance but it *wasent* but a little piece.

Q. Did you examine any other timber at that place to see whether it was also marked.

A. No sir I dont know that I did.

page 142.] Q. How were these two poplar trees marked?

A. They were marked kind a on each side?

Q. How many hacks on each side did they have?

A. Three.

Q. Which way did these hacks face?

A. They faced sorter—one of the right down towards the house and the other one sorter down the other way like—sorter down Race Fork.

CROSS-EXAMINED

By Mr. Stiles.

Q. How did you happen to notice how these marks faced?

A. Westley he was a showing them to me and told me they was corners.

Q. By Westley do you mean John W. Justice?

A. Yes sir.

Q. Where did he live at that time.

A. On Lesters Fork.

Q. Do you remember in what year this was that you saw them?

A. No not for certain I dont.

Q. To whom, if any one, did you mention the fact of having seen such trees and when?

A. I never mentioned it, as I recollect to no certain one, I never paid much attention to it at all.

Q. Who is your father?

A. Wiley Justice.

Q. Where does he live?

A. On Knox Creek on what is called Guesses Fork of Knox Creek.

And further this deponeth saith not.

his
ROBERT X JUSTICE.
mark

Witness claims 3 days and
104 miles travel

page 143.] SAMUEL JUSTICE a witness introduced in behalf of the contesting defendants, after being first duly sworn, upon oath says:

EXAMINED
By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age about 57 years, residence McDowell County, West Virginia and by occupation a farmer.

Q. What Creek do, you live on.

A. I live on Bull Creek right close to the line.

Q. Are you acquainted with Daniel Justice and the place where he now lives on the right fork of the Race Fork of Knox Creek?

A. Yes sir I am very well acquainted with Daniel Justice and the place but I am better acquainted with Daniel than I am with the place altogether.

Q. Are you acquainted with the small drain that comes in to the Race Fork right at Daniel Justices house?

A. Yes sir *Tolerble* well

Q. Did you ever do any land surveying or assist in any land surveying?

A. I have carried chains and axes to mark with.

Q. Do you know how corner trees and line trees are marked, if so how?

A. Yes sir I have *seed* some several in my life—it generally takes three for a corner and two for a line.

Q. Did you ever see any marked timber trees standing near where Daniel Justice now lives and a short distance from the little branch or drain above referred to?

A. Yes sir I *seed* one poplar.

Q. How many marks did it have on it?

A. It had three to my recollection.

Q. In how many places did it have three hacks?

A. It had two places

page 144.] Q. How long has it been since you saw that tree so marked?

A. Well sir I really *cant* tell you, its been though somewheres from thirty three to thirty five years.

Q. Who, if any one was with you at the time and what has become of him?

A. My father was with me at the time and he is now dead.

Q/ What were you and your father doing in there at that time?

A. We were *sanging*.

Q. Did your father also see the tree marked?

A. Yes sir.

Q. Was there anything said by you or your father at the time about the corner?

Objected to by the defendant King.

A. Why father spoke to me and says there has been a corner here in time—he was talking about buying the farm above the — what is called the Estep farm, and he said he *dident* know whether it was a corner to the Estep farm or not.

Q. What was the *appearance* of these hacks in respect to age?

A. Well sir I really *couldent* tell you but I thought they looked like *tolerble* old hacks.

Q. On which side of the little drain did the poplar stand?

A. Well sir according to my recollection it was on the left hand side going up.

Q. About how far did it stand from the little drain?

A. Well sir I dont exactly recollect but somewhere from fifteen to twenty steps.

Q. About how far did it stand from the Race Fork?

. A. Why from one hundred and fifty to two hundred yards—somewheres that bounds I think.

Q. *I* In which direction did the marks *poijt*.

A. Well sir it is my recollection it was pointing towards the mouth of Race Fork.

page 145.] Q. In which direction did the other marks point?

A. Why sir it pointed sorter in like across it—that is across the Race fork.

CROSS-EXAMINATION

By Mr. Stiles.

Q. Did you ever see that poplar tree more than once?

A. No sir.

Q. Do you know the name of the branch or hollow where it stood

A. No sir I dont.

Q. Did you take particular notice at the time how the tree was marked or pay any attention to the way the marks faced?

A. I paid attention—yes sir.

Q. Did you charge your memory with it.

A. Well sir not so overly good—my father was talking with me & paid attention enough to know how the marks was at the time he was talking with me.

Q. When was the last time you were at that place?

A. I dont recollect that I was at that place any more than only that time, but I have passed up and down the creek.

Q. How lately have you been passed that place?

A. It has been about I reckon a year this last Spring—last April a year ago.

Q. Was there any cleared land in the neighborhood of that tree at the time you saw it?

A. No sir not any.

Q. How many times have you been at Daniel Justices place since he lived on Race Fork where he now lives?

A. Twice is my recollection.

Q/ Do you know whether that tree is still standing?

A. No sir I do not.

page 146-7] Q. What was the character of the country from where this tree stood on up the hollow towards Paw-Paw? Was it open country or was it mountainous

A. It was mountainous at that time.

Q. How long was the drain or hollow where this tree stood?

A. Why sir I really *cant* tell you but I expect it is a half a mile or a quarter long there but I really *cant* tell.

Q. Was the tree on the flat or on the hill side?

A. On the hill side sir that I saw.

Q. Do you think you could go to the place where that tree was or is without assistance?

A. Why yes I could go close that place?

And further this deponeth saith not

his
SAMUEL X JUSTUS.
mark

Witness claims 3 days and 76 miles travel

It is ordered that these proceedings be now adjourned until tomorrow morning at the same place.

J. T. GRAHAM,
Commissioner.

Welch, West Virginia, July 3rd, 1902.

Met pursuant to adjournment on yesterday. Present same parties as on yesterday.

(See Vol 2, page 31—July 4—1902 when proceeding *were* resumed.)

page 148.] Met at Logan in the County of Logan, West Virginia, this 16th. day of July 1902, pursuant to adjournment on Thursday, July 10". Present: Same attorneys as heretofore and H. C. Ragland, Guardian ad litem for infant defendants.

A. J. ELLIS, a witness introduced in behalf of the contesting defendants, after being first duly sworn upon oath testified as follows:

EXAMINED

By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age I will be ~~ty eight the 23rd. of next month, I reside at Logan Court House, and by *occupation* a farmer.

Q. How long have you resided in Logan County?

A. All my life except 3 years.

Q. What 3 years were you out.

A. During the years 1846-1847 and 1848. I was a citizen of Pike County Kentucky during that time.

Q. Where were you born and in what parts of the county have you lived during your life?

A. I was born over here close to, *t* the forks of Island Creek, and I have lived on that creek and up as high as Dingess Run and right around here.

Q. Name as many of the old settlers as you can recall who lived and died on Island Creek and with whom you were acquainted?

A. Old Peter Dingess, Old Eben Ellis, Old Philip Ellis, Old Barney Curry, Old Ermond Browning and Old Frankie Browning were the old settlers and Old Ralph Steel, Old Abner Vance, Old *Jonnie* Vance, Old Robert Curry, Old Billy Dempsey, Old Joe Dempsey and Old Jim Dempsey were also old settlers.

Q. Were you personally acquainted with these men whose names you have given and are they now all dead.

A. I was personally acquainted with them and they are all now dead.

page 149.] Q. State whether you ever visited these parties at their homes on Island Creek?

A. I dont think there is one that I have named but what I have been at their house.

Q. How early in your life did you become acquainted with these old Island creek settlers?

A. Well I *couldent* say from a child up till they passed off.

Q. About what ages were these Island Creek settlers when you first knew them?

A. Well I would say that they was about from along my age now up.

Q/ How long have *thes* men been dead?

A. When I was about from 12 years old up they began to die off.

Q. Give the names of all the old settlers on the Guyandotte River at or near Logan Court House?

A. Well I was acquainted with the McDonalds—old John McDonald and old Neddie McDonald and old Joe McDonald and old Wallace McDonald, and old Billy Hinchman, old Jimmy Chambers, old Samuel Mullins and there are numerous other old people that I could call over.

Q/ Were you acquainted with old William Dinges, who entered and surveyed lands on Island Creek?

A. Yes sir.

Q. Did you ever hear these old settlers or any of them talk about the local history of the country and particularly about the name of Island Creek?

A. Yes sir—I never heard it called nothing else

Q. What is the size of the present *Island* at the mouth of Island Creek?

A. I would say there is from twenty five to thirty acres in it.

Q. How large was the *Island* when you first knew it?

A. My understanding was there was sixty acres in it from the little tide—in both *Islands.*

page 150.] Q. How far up and down the Guyandotte River have you been in your life time?

A. I have been from about twenty miles above Baileysville to the mouth of the river.

Q. Are there any other Islands in the River of any size?

A. I don't know of any. I know of Islands but none of any size.

Q. State if when you were a younger man you attended the

courts of your county as *pettit* or grand *jurror* and if you attended the public meeting in your part of the county-religious or political?

A. I was a regular *pettit* juror until my age cut me out and I always attended the political and religious meetings in my part of the country.

Q. Was there *aver*, to your knowledge, any reputation, history or tradition among the old settlers whom you have named, or any other residents of the county with whom you were acquainted, saying that Island Creek which empties into Guyandotte River here at the big Island, was ever *knowd* or called Gilbert Creek?

A. I never did to my recollection until they got a suit up and then I heard other parties—not the citizens, talk it. I mean by the suit this King suit.

Q. Were you ever upon Gilbert Creek and upon the Horse Pen fork of Gilbert, which creek enters the Guyandotte River, some twenty-five or more miles above the mouth of Island Creek?

A. Many a time sir.

Q. How early in life were you on that creek and that fork?

A. Well I will say I was there from fourteen years up *sanging*,—my parents would go there and lay out *sanging* when I was about that age.

Q. Give us the names of any old settlers on that creek with whom you became acquainted at that early date?

A. There was very few on that creek—old Larkin Smith was on that creek then and old Billy Browning and there was old Tommy Hatfield which is all that I recollect of.

Q. Was there any tradition among the old settlers of Logan County as to how Gilbert Creek got its name, if so what was that tradition of history?

page 151.] Objected to by defendant King.

A. It was always called that and I suppose it got its name

by the *indians* killing Gilbert. I have been showed the lick and have been showed the trees where his name was cut on, by old people that was there.

Q. Where is that lick and those trees?

A. On Gilbert Creek, near where Lee Ellis now lives.

Q. Is there any branch coming in near that place?

A. I don't just know I won't be positive but I think there is a branch coming in there which is called skillet branch. but I won't be positive.

Q. Is there any gap in the mountain near by and if so what is the gap called.

A. There is and it is called Twisted Gun Gap.

Q. If you know you may state how it is said that gap got its name?

A. I don't know only hearsay—I was told by the settlers there that the *indians* got the guns of the man they killed and another man that got away and took them there and twisted them around a tree.

Q. If you know you may state when it is said that Gilbert was *killd* by the Indians?

A. I don't know.

Q. What route did you travel in going from Island Creek either to the Horse pen Fork of Gilbert or to Gilbert, in those early days.

A. I always went Island Creek onto the Horse Pen and from Horse Pen to Gilbert.

Q. Are the old persons who pointed out the lick and *thercos* where Gilbert was killed, now dead?

A. Yes sir I don't know of any of them alive.

Q. Did you see the name or letters of Gilberts name cut in the tree.

A. I did at different times.

Q. Do you remember what kinds of trees it was

page 152.] A. My recollection is that it was two beeches—it was a great show to the young people to go and see them.

Q. Did you ever see and talk with Samuel Lusk who was captured by the *indians* at the time they killed Gilbert?

A. No sir.

Q. When did your father die and how old was he at that time?

A. He died in 1867 I think but I don't recollect how old he was.

Q. Was he above 70 years of age?

A. Yes sir.

Q. Do you know from family history where he was raised and when he first settled here in Logan, if so state it?

A. If I don't mistake I heard him say he come here when he was 5 years old from Monroe County—my grandfather was the first man that cut a stick on Island Creek—right where Howard Ellis lives now—I have heard that all my life—that is what I have been told by him and my parents.

Q. Did you ever hear your father and your grandfather talk about the local history of their section of country about the different settlements and the names of families and of creeks?

A. I don't know—I have heard them tell how they come here and who came with them.

CROSS EXAMINED

By Judge Stiles.

Q. What were the words or letters that you saw cut on the trees *whacre* you understand Gilbert was killed?

A. Well I don't know that I can recollect only that they said it was Gilbert's name and Lusks name, I was no scholar then.

Q. About how old were you at that time?

A. I would say—I might have been a little under 14 years but not much.

Q. Did you hear any of the old people tell about the *indians*

taking Lusk down Island Creek and camping on what is called the Hog Back just across the river from this place.

page 153.] A. I have heard them talking about them staying on the back-bone with him but I don't recollect that they said which way they come with him. The back bone is opposite the mouth of Island Creek.

Q. Did you ever hear among any of the old people that you have *met* on that Island Creek and ever had any other name than Island Creek?

A. Never in my life until that period of time that I told you. That was until after this suit. I never heard it until Mr. Sells commenced surveying here—is my recollection.

Q. Did you ever prior to that time hear that Gilbert Creek or Buffalo Creek or any of the other creeks between here and Gilbert Creek had been known at any time by names different from their present names?

A. Never.

Q. You were born in 1825.

A. Yes sir.

And further this deponent saith not.

his
A. J. X ELLIS
mark.

1 day—1.00.

page 154.] JOHN R. BROWNING, a witness introduced in behalf of the contesting defendants, after being first duly sworn upon oath testified as follows:—

EXAMINED
By Mr. Campbell.

Q. State your age, residence and *occupaton?*

A. Age 73 years past, I reside on Island Creek in Logan County, and by occupation am farmer.

Q. Where were you born and where have you since resided?

A. I was born on Island Creek in Logan County, and have resided all the time in this county.

Q. Has your home been on Island Creek ever since you were born?

A. As far as I can recollect it has always been on Island Creek.

Q. What was the *nae* of your father and how old was he when he died?

A. Reece Browning was his name and he was about 70 years at time of his death. He was born in 1802 and died about 1872.

Q. What was the name of your grandfather and were you acquainted with him during his life time?

A. Edmond Browning—Yes I was acquainted with him for many years during his life time.

Q. Where did he live?

A. He lived on Island Creek during my *acquaintence* with him.

Q. What other old settlers were you acquainted with from your *earlies* recollection, who are now dead?

A. Philip Ellis, Even Ellis and Barnabas Curry, were the three oldest men that I recollect of—they were amongst the first settlers of this county.

Q. Name the old persons whom you used to know on Gilberts Creek and Horse-Pen Fork of Gilbert?

A. I was very well acquainted with John Stafford, one of the first settlers in that part of the country and old Peter Cline who lived to be over one hundred years old and died a few years ago, and old man Isaac Spratt—he lived at the mouth of that creek, he died some fifteen or twenty years ago—

page 155.] he was a very old man.

Q. When you were a boy a young man did you visit the homes of the old settlers whom you have named?

A. Yes sir right smartly as a neighbor would.

Q. Did the old settlers in your *earlies* recollection have gathering for the purpose of rolling logs, clearing lands and raising houses?

A. Yes sir they had gatherings for the purpose of rolling

logs and raising houses. I don't think they had gatherings in that day for the purpose of clearing lands.

Q. Have you heard the old man you have named or any of them talk about the settlement of the country and the names of the different creeks?

Objected to by defendant King.

A. Yes sir some of them, I don't know that I heard them all.

Q. What is now and has been since your earliest recollection, the name of the creek that comes into *Guyandott* River opposite the big Island near Logan Court house?

A. Island Creek.

Q. Was there ever to your knowledge any tradition or reputation among the settlers, both early and late, on Island Creek, that Island Creek was once called Gilbert Creek?

A. Not till since this suit came up—by Stiles and Wilder.

Q. Did you ever hear any of the old settlers of the county say that Island Creek was ever called Gilbert?

A. No sir not to my recollection.

Q. Who was it that since this litigation begun that has contended that Island Creek was once called Gilbert?

Objected to by defendant King.

A. I don't know that I can recollect any definite person—just heard it rumored that they was trying to set this Creek up as Gilberts Creek or some thing to that amount.

Q. What is now, and has been, since your earliest recollection, the name of the creek which comes into Guyandotte River, where Isáac Spratt lived during his life.

page 156.] A. Gilberts Creek.

Q. What is and has been since your *earlies* recollection, the name of the main right hand fork of Gilbert Creek?

A. Horse—Pen Fork

Q. Did you ever have any conversation with old man Isaac Spratt and old man Stafford or Cline, whom you have named,

about how Gilberts Creek got its present name, if so state the conversation?

Objected to by Defendant King.

A. Yes I have had a conversation with two of these men that is Stafford and Spratt, I dont know that I ever did with Cline. Well our conversation was had *a* different times about this country and Gilbert Creek and he told that that was Gilbert Creek and why it was caled Gilbert's Creek—by a man being shot on that creek, by a man by the name of Gilbert being killed on that creek at a deer lick on that creek and the creek afterwards was called Gilbert Creek.

Q. *what* statement did Mr. Stafford make to you on that same subject?

A. Well his statement was similar to that of Spratts.

Q. Did either of them ever point out to you the location of the deer lick at which Gilbert was killed?

A. I dont think they did if they did I dont remember.

A. Did you know old William Dingess who entered and surveyed land on Island Creek?

A. I dont think I did.

CROSS-EXAMINATION

By Judge Stiles.

Q. You are one of the parties to this *s it* are you not, under the fifth amended bill?

A. I suppose I am

Q. The lands that you claim are on Island Creek, are they not?

A. Yes sir the most of them are.

Q. In what year were you born?

A. 1827

page 157.] Q. When did you first have any talk with Isaac Spratt or old man Stafford? about the name of Gilbert Creek

A. I *suppost* that was when I was between the age of fifteen and twenty years old—I dont know I *couldent* get back to the year.

Q. That was about your first *acquaintence* with that creek was it?

A. Yes sir.

Q. Did you never hear from any one prior to the institution of this suit that Island Creek *ahad* been or that they had said that it had been, at any time called by any other name than Island Creek?

A. No sir.

And further this deponent saith not.

JOHN R. BROWNING.

Witness claims 1 day and 16 miles travel.

CALVIN BURGESS, a witness introduced in behalf of the contesting defendants, after being first duly sworn upon oath testified as follows:

EXAMINED

By Mr. Cambell.

Q. State your age, residence and occupation?

A. I was born in 1826, I live at Logan Court House and my occupation has been that of a farmer

Q. Where were you born and reared?

A. I was born on Buffalo Creek and was raised there the biggest part of my time. Mr father lived there at the time I was born and lived in that neighborhood until he died;

Q. How far is Buffalo on which you were born and reared from Big Huffs Creek.

A. Well sir about a mile at the mouths of the two creeks.

Q. Were you acquainted with the old settlers of the country when you were growing up?

page 158.] A/ Yes sir, the most of them.

Q. Were you acquainted when a boy with the old people at that time residing on Island Creek?

A. Most of them

Q. Did you attend the courts and public meetings—political and religious in your county and there talk with the old settlers, or hear them talk among themselves about their settlements, names of the creeks and the country?

A. Yes sir.

Q. Was there among them to your *knowledged* or information, any history or tradition or repute that Island Creek was once called Gilbert Creek?

A. No sir. It never was called anything but Island Creek. I recollect very well I worked here for a man by the *ame* of Anthony Lawson and stayed right here in this town and worked for him.

CROSS-EXAMINATION
By Judge Stiles.

Q. What did the old settlers say about the names of the creeks at these meetings and the courts you have spoken of?

A. Well I *cant* recollect that.

Q. Did you never hear among them or from any other source that some of the creeks of Guyandotte River in this county had undergone a change of names from the names they originally bore?

A. No sir.

Q. About how many families were living on Buffalo Creek in your boyhood?

A. Well I expect betwixt ten and fifteen.

Q. How long is that creek?

A. I expect it is twelve or fourteen miles and maybe longer than that. It has several branches and forks.

Q. The whole county was very *thinkly* settled in those days was it not?

A. Yes sir it was not settled as it now is.

And further deponent saith not.

1 day 1.00

CALVIN BURGESS.

page 159.] Counsel for defendant King states he does not contest the proposition that Gilbert Creek took its

name from Gilbert who was killed upon that creek by the *Indians* and that the opposing parties may dispense with any further evidence for the purpose of establishing the tradition or reputation to that effect.

Counsel for contesting defendants file with the commissioner certified copy of the survey made for John Preston, of 317 acres of land by virtue of part of an entry made the 23rd.' day of August 1782 for 1000 acres of land lying in Montgomery County, on Buffalo Creek water of the Guyandotte and adjoining the 100 acres survey made for John Preston at the mouth of Buffalo Creek—therein called Elk Creek which survey bears date October 9th. 1798. 2nd. Copy of survey of 50 acres made for William Dingess October 8th 1810 on an entry made on the 18th. of January 1809.

These papers are filed for the purpose of showing that the Elk Creek called for in the John Preston Survey of 100 acres made October 17th. 1783 has for some date prior to the date of the Preston survey of 317 acres been called Buffalo Creek and has not been changed since.

Also file copy of a survey of 100 acres made September 28th. 1810 for William Dingess situated on Island Creek adjoining the John Breckenridge 300 acre survey. This survey was founded on an entry dated September 11th 1806.

Also copy of survey made for Captain William Dingess March 1st. 1814 of 200 acres on main Island Creek and founded on an entry dated the 7th. of December 1811.

Also a copy of a survey of 160 acres made for William Dingess October 15th. 1810, founded on an entry made 18th. of January 1809 on main Left hand fork of Island Creek; beginning on the John Breckenridge 300 acre survey.

Also a certified copy of a survey made for Wil-
Page 160.] liam Ward of Botetourt, situate on Guyandotte River at the mouth of Peter Huff's Creek, made December 3rd. 1783, for 310 acres.

Also certified copy of a survey made February 8th. 1788 for James Hines for 2223 acres, situate on Cane Creek a west branch

of Guyandotte, emptying into the same about three miles above War Creek.

Also a certified copy of a survey made 13th. of February 1788 for Francis Preston for 900 acres on Cane Creek joining and above the James Hines Survey of 2223 acres.

Also a certified copy of the survey made November 19th. 1811 on an entry made the 18th. of November 1811, for 75 acres on Guyandotte River, beginning at a point two or three hundred poles below the mouth of Huffs Creek, for Thomas Buffington and calling for adjoining the John Preston survey.

In this connection the Commissioner's attention is called to a copy of the John W. Kettera survey of 180000 acres.

Also file certified copy of the survey made for Thomas Madison and Andrew Lewis, on the 16th. December 1787, lying on War Creek a south-west branch of Guyandotte.

Also a certified copy of a survey of 532 acres adjoining the above tract made May 13th. 1788, for John Street, lying on War Creek.

Also certified copy of a survey of 376 acres made May 23rd. 1788 for Edward Thomas and John Satchett, lying on War Creek and adjoining the tract of 582 acres above named.

Also file an entry made in June 1795 for James Taylor of 9264-1/4 acres situate on the Waters of Guyandotte River adjoining an entry of Samuel Moore of about 33,000 acres made in Kanawha County.

Also a copy of the survey of the same and of the grant.

Also a copy of the survey of 32965-1/2 acres made for Samuel Moore August 18th. 1795.

Also a certified copy of the survey and plat of 25000 acres made by James Taylor 11th August 1795, situate on Island Creek of Guyandotte River for Call McGreegor.

page 161.] Each of the foregoing copies of entries, plats and grants were filed by the commissioner in this case and for the purpose of identification were marked as filed as of this date and signed by the commissioner.

To the filing of each of the foregoing copies, of surveys, en-

tries plats and grants the defendant King objects and moves to strike the same out.

S. S. ALTIZER, a witness of lawful age, after being first duly sworn upon oath testified, in behalf of the contesting defendants as follows:

EXAMINED

By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age 56 years, reside at Logan Court house, and have been for the last 17 years County Court Clerk of Logan County.

Q. Describe how Island Creek enters the Guyandotte River and whether there is or ever was any bottom on said river at or below the mouth of said creek?

A. The creek runs down until a short distance of the river and turns and runs almost *parallell* with the river for a short distance along the base of a ridge called the "Back-Bone", for a distance of something like a half a mile, at which point it enters the river. There is no bottom there and there has been none at or near the mouth of Island Creek on the lower side since I have been here.

Q. What is the topography of the country at the mouth of Island Creek at and below the mouth?

A. At the mouth of Island Creek and for some distance below the mountain comes down to the edge of the water.

Q. Is there any evidence or indication on the ground that there ever was any bottom at and within several hundred poles of the mouth of Island Creek?

Objected to by defendant King.

A. There is a small bottom sets in there *withing* about one hundred poles *poles*—that is to my estimation.

page 161a.] There is no indiction of any bottom ever having been at the mouth of the creek for the creek and the river run along the base of the mountain.

Q. What lies between Island Creek and Guyandotte River where they *parellell* each other.

A. An is land and sand bars.

Q. What is it at the upper end of the island which makes the body of land an island.

A. It is the flow of the river which runs into island creek when the river is up. When the river is up it crosses the sand bar between the big island and little island and connects with island creek.

Q. What waters surround the little island?

A. Island Creek and Guyandotte River.

Q. Were you acquainted with the old people who formerly lived on Island Creek and other old people who lived on the Guyandotte River—at above and below Logan Court House and who are now dead?

A. I was acquainted with quite a number of them?

Q. Have you met them at their homes and at public gatherings at various times and talked with them and heard others talk to them?

A. I have met them at their homes and at the court house here and talked with them and heard other people talk with them.

Q. Was there ever to your knowledge or information among those old people whom you knew or with the people of Logan County any tradition or repute that Island Creek was ever called Gilbert Creek?

A. I never heard any of them talk about any thing like that. I have heard it *spoken* of since this King suit was brought. When the defendants sent for witness to go to Parkersburg to prove about the names of the creeks is the first I ever heard of it—this was in the King suit. At that time I heard some of the old men talking freely about it.

Q. Did any of the old men *recorded* to say that Island Creek was ever called Gilbert.

Objected to by defendant King.

page 162.] A. No sir they did not.

CROSS EXAMINATION

By Judge Stiles.

Q. There was very great and general opposition to Mr. Kings claim at the time last mentioned at Logan Court House and through out the county was there not?

A. I never had anybody state that they had any objection to Mr. King having any land that he had any title to, if he would run his lines according to the calls in his patent.

Q. There was, however, great objection and opposition in the locality mentioned to his assertion of title as asserted by him in his suit referred to was there not?

A. I have heard people who lived in that locality say that he had no title to any land below Gilbert Creek.

Q. Many of the people and old men you referred to were parties to the King suit or relatives or neighbors with persons who were parties, were they not?

A. Some of the parties I refer to do not live or did not, within the boundary claimed by King; some of them do not own any real estate and some of them, I do not think are related to any of the parties in the King contention.

Q. But the rest of them were parties to the suit or connected with parties to the suit, and all of them were friends or *partizans* of such persons, were they not?

A. Some of them were parties to the suit and some of them were friends to parties to the suit but as to all of them being friends to parties to the suit I am unable to say.

Q. How long have you known Island Creek?

A. Thirty-five years.

Q. Has there within that time been any change in the Island near the mouth of the creek or in the course of the creek at its mouth or near it or of the river in that neighborhood?

A. There has been little or no change at the mouth of Island

Creek, either in the Island or the river; at the upper end of the island the river has cut away a large portion

page 163.] of it.

Q. What proportion o the island has been washed away within the period of your memory?

A. I think about one fourth, perhaps of the upper end of the island has been cut away since I first knew it.

Q. Do the waters of the river and the creek now unite at or near the upper portion of the island?

A. A large portion of the river flows thro' the gap between the two islands and unites with the creek at the upper end of the big island when the river is up.

Q. The so called Island then is not now entirely surrounded by water except when the river is up, is it?

A. Is it not.

And further this deponent saith not.

S. S. Atizer.

page 164.] It is *orfered* that these proceedings be now adjourned to the mouth of Buffalo Creek, Logan County, West Virginia, to meet tomorrow morning.

J. T. Graham,
Commissioner,

Met this the 17th. day of July 1902 at the mouth of *Bufalo* Creek, in Logan County, West Virginia. Present Counsel for contesting defendants and Judge Stiles counsel for defendant H. C. King.

WILLIAM W. McDONALD, a witness introduced by the contesting defendants after being first duly sworn upon oath testified as follows:

EXAMINED

By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age 85 years past. I live on Guyandotte River opposite

the mouth of Peter Huffs Creek, and by occupation a farmer.

Q. How long have you lived at that point

A. Over sixty years I suppose—I come in March 1842

Q. Where had you lived previous to coming there?

A. I lived on the McDonald farm in Wyoming County.

Q. How far above the mouth of Peter Huffs Creek?

A. I think about 17 or 18 miles they call it—that is by the road.

Q. Are you acquainted with the location of the Gordon Cloyd Survey of 7800 acres?

Objected to by defendant King.

A. I know pretty well where it is located—dont just know or recollect the courses or boundary of it. I think it commences about the mouth of Gilbert and runs north *ten* east but dont just know where it goes to but think it runs somewhere on Buffalo and corners.

Q. Does any stream of water form a boundary line of that survey and if so what stream?

Objected to by the defendant King.

A. Yes a portion of it—Guyandotte River and Huffs Creek—

I might have been mistaken about it running to

page 165.] Buffalo Creek.

Q. Do you own any part of that Cloyd survey, if so how long have you owned it?

Objected to by defendant King.

A. Yes sir I own a part of it, I dont recollect but I think *Im* have owned it some wheres between fifty and sixty years.

Q. Was any part of the land purchased by you out of the Cloyd survey, cleared and improved when you bought it?

Objected to by defendant King.

A. Yes sir a portion of it.

Q. *Frrom* whom did you make your purchase?

Objected to by defendant King.

A. I purchased a portion of it from Lewis E. McDonald and the bigger part of it I purchased from grandfather McDonald heirs. And there is still more—the Perry land they call it I pur-

chased that there is 500 acre or upwards they call it—but it is a good deal over 500 acres.

Q. Was the Perry land a part of the Gordon Cloyd survey?

A. Yes sir that is the way I understand it.

Q. When did your grandfather acquire an interest in the Cloyd survey?

Objected to by defendant King.

A. I *cant* answer that.

Q. How long had he owned it to your knowledge before you purchased it from his heirs

Objected to by defendant King.

A. I dont know just how long but some several years.

Q. Was there any dwelling house on the part bought from Perry and if so was it occupied at the time you bought?

Objected to by defendant King.

A. Yes sir and it was occupied.

Q. By whom was it occupied and how long had he occupied it before your purchase?

page 166.] A. Joseph Perry occupied it and how long I don't know he had been living on it for a number of years.

Q. State as near as you remember how many years he lived there?

A. He was living there when I came to the mouth of Huff in March 1842.

Q. Did he continue to live there until he conveyed the land to you?

A. Yes sir he continued to live there until I bought the land—the land was sold for debt and I bought it.

Q. In what year did you buy the Perry land?

A. I don't remember how long it has been but it has been a good while.

Q. How long did he continue to live there after you made your purchase of it?

Objected to by defendant King.

A. Not very long—it *wasent* a year. I bought it I think in the fall and he left the next Spring.

Q. What was the character of the improvements on the place when you bought it, state how many acres were *improved* and cleared and whether there was an orchard on the place when you bought it?

Objected to by defendant King.

A. Well there was a log house, I think it was, built on it. I reckon there was some sixty or seventy acres cleared and fenced but there was no orchard, there might have been a few fruit trees but nothing you could call an orchard I don't think.

Q. Judging from *appearances* from the improvements mentioned how old were they in your opinion?

Objected to by defendant King.

A. Well they must have been some fifteen or twenty years.

Q. What did you do with the land when Perry moved off of it?

Objected to by defendant King.

page 167-8. A. I let it lay *idel* a few years—pastured it probably, after that I put a renter on it. I had tenants on it for several years and then my son who is now dead, occupied it and his family occupy it now.

Q. How long did *you* son occupy it before his death?

A. Well I dont just remember—some two, three or four years.

Q. When did your son die?

A. It has been over a year.

Q. Has that property been vacated at any time after you put a tenant on it?

Objected to by defendant King.

A. No I dont think it has.

Q. Has the cleared land been kept enclosed and occupied?

Objected to by defendant King.

A. I dont think it has all been enclosed but the most of it has been occupied

Q. Did you keep tenants on the place until your son moved there?

Objected to by defendant King.

A. Yes sir I think I did.

Q. Was the part which you purchased from your grandfather McDonalds heirs occupied by any one living on it at the time you purchased?

Objected to by defendant King.

A. I dont think it was.

Q. How much of it was cleared and enclosed when you purchased?

A. I *cant* tell the number of acres now there was several acres cleared.

Q. Does that part of the land adjoin the part you bought of Perry?

Objected to by defendant King.

A. Yes sir it does.

Q. Have you cleared or caused to be cleared any of the land since you purchased it?

A. Yes sir.

Q. How much and when.

page 169.] A. Some ten or twelve acres I reckon—it has been cleared several years.

Q. About how many years?

A. Some five or six years I guess.

Q. How much was cleared at the time you bought it?

A. Well I dont know that there was any cleared at the time I bought it only where Perry lived?

Q. Where does your portions of the Clory survey lie with reference to the Guyandotte River and with reference to Huffs Creek

A. Well it *binds* on Huffs Creek and on the river to the upper end of it.

Q. Does *you* line then run to the back line of the survey and from there to Huffs Creek?

A. Yes.

Q. About how many acres in that boundary, in your judgment?

A. Some ten or twelve hundred acres I guess. That is all of the Cloyd survey that I own.

Q. How far up and down the river do you run?

A. Something like four miles I think.

Q. How far it from the mouth of Peter Huffs Creek to the mouth of Gilberts Creek?

A. I believe it is called about ten miles.

Q. Have you paid taxes on this land, if so how long?

Objected to by defendant King.

A. Yes I have paid taxes on it ever since I bought it.

Q. When did you acquire the land on which you moved in March 1842

A. Just a short time before I moved to it.

Q. How much land did you acquire at that time?

A. It was estimated to be about 100 acres

Q. Does it adjoin the part of the Cloyd survey which you purchased

Objected to by defendant King.

A. No sir it dont—that lies on one side of the river and the Cloyd on the other.

page 170. | Q. What land lies between the tracts you bought and have lived on since 1842 and the land you bought out of the Cloyd survey?

A. There is no land between them. The river lies between them.

CROSS-EXAMINATION

By *Judg* Stiles.

Counsel for defendant King here moves to strike out all of the testimony of the witness.

Q. Where did Perry from whom you purchased, live

A. He lived about two miles above the mouth of Huffs Creek on east side of the river.

Q. Did he not live on, or claim, a tract of land patented to himself or patented to some one other than Cloyd?

A. I dont know about that.

RE-DIRECT EXAMINATION
By Mr. Campbell.

Q. Who, if any one, to your knowledge lived on the upper end of the Gordon Cloyd Survey next to the mouth of Gilberts Creek?

Objected to by defendant King.

A. I dont know now who

Q. Do you know the names of any persons who lived on it from first to last down to the present time?

Objected to by defendant King.

A. No sir I dont.

Q. Did you know James P. Christian?

A. Yes sir.

Q. Where did he live?

A. He lived up on Elk at the time he died—he used to live down here somewhere.

Q. Was that on the Cloyd survey?

Objected to by defendant King.

A. I dont know whether it was or not.

Q. Did you know Isaac Spratt if so where did he live?

A. Yes sir I used to know him he lived at the mouth of Gilbert I think

Q. Did you know old John Stafford, if so where did he live?

A. Yes sir I knew him he lived below the mouth
page 171.] of Gilbert on the east side of the river—a short distance below

Q. When and how long did he live there?

A. He lived there about 1841 and 1842 I used to be along there and I dont know how long before

Q. How long did he continue to live there after that time?

A. He continued to live there until his death—I cant remember how long it has been since his death.

RE-CROSS EXAMINATION

Q. Who were *you* tenants on the land you bought of Perry?

A. Peter Rife was a tenant I forget whether I had more than one

Q. When did he move on to the land?

A. I *cant* recollect it has been a good while ago.

Q. When did he move off the land?

A. I *cant* recollect now how long it has been since he moved off

Q. Has that been a good many years ago?

A. Yes it has been a good while.

Q. Did he have any lease of the property?

A. No he had none from me.

Q. Do you know how much of the land he cultivated or used?

A. Some forty—or fifty or may be sixty acres.

Q. Do you know whether he is now living?

A. He is not living.

RE-DIRECT EXAMINATION.

Q. Under whose authority did Rife go and remain upon that land purchased by you from Perry?

A. From my authority.

Q. Give us your best *impresion* as to the number of years he remained upon the land.

A. He lived on the land several years but I dont just know just how long.

Defendant King renews his motion to strike out all of the testimony of the witness

And further this deponent saith not.

his

WILLIAM X W. MCDONALD.

mark

page 172.] ALEXANDER TRENT, a witness introduced by the contesting defendants after being first duly sworn upon oath testified as follows:—

EXAMINED

By Mr. Shepperd.

Q. State your age, *resident* and occupation?

A. Age 72 years, I live in Mingo County, West Virginia a short distance above the mouth of Gilbert Creek—about 400 yards from the mouth of the creek and by occupation a farmer: I am at present in the merchandising business.

Q. How long have you lived at the mouth of Gilbert Creek?

A. Except about two or three years that I lived this side of Logan Court House—I have lived at the mouth and near it about twenty-five years.

Q. How long have you lived at your present residence?

A About five years.

Q. Did you own the land where you lived at the mouth of Gilberts Creek.

A. Yes sir.

Q. From whom did you purchase it?

A. James Spratt.

Q. Who was James Spratts father?

A. Isaac Spratt.

Q. Were you acquainted with Isaac Spratt?

A. Yes sir.

Q. Where were you born and raised?

A. My information is that I was born on the edge of Pike County Kentucky but was moved off when I was so small I dont remember it. *we* moved to the mouth of Ben Creek in Logan County the first place or near the mouth of Ben Creek—it was not right at the mouth.

Q. How long did you live at that place?

A. Well to the best of my recollection I was about six years old when we moved across to the Horse Pen fork of Gilbert Creek.

Q. How long did you live on the *hors pen* fork?

A. I lived there until 1874, I left there then and went to McDowell for a couple of years and lived on Tug River

page 173.] I bought the land at the mouth of Gilberts from James Spratt and moved there in 1875

Q. What improvements if any were on the land you bought from Spratt?

A. I suppose there was twenty-five or thirty acres of the land improved.

Q. Was there a house there?

A. Yes sir.

Q. Who occupied the house and cleared land when you first knew it?

A. Isaac Spratt.

Q. When did you first know the improvements there and Isaac Spratt?

A. About 1838 is my recollection?.

Q. Who occupied those improvements after Isaas Spratt?

A. James Spratt?

Q. Where was the dwelling house of Isaac Spratt located? with reference to the mouth of Gilbert Creek?

A. Well from my information from where the creek run in at that time it was not exceeding forty yards from the mouth of Gilbert Creek.

Q. On which side of the creek?

A. He lived on the upper or east side of the creek.

Q. Has the bed of the creek changed at the point where it empties into the river?

A. From my information and recollection it has.

Q. Where does it now empty into the river with reference to the former location of its mouth?

A. It empties in at about fifteen poles, I reckon, below where it did empty in.

Q. Is there a bottom of Guyandotte River below the mouth of Gilbert Creek as it formerly emptied into the river?

A. There is a bottom there that stretches along Guyandotte River and runs back up Gilbert Creek which has about four acres I suppose.

Q. Has the condition and size of that bottom been effected by the change of the bed of Gilbert Creek, if so how?

A. Well the creek cut off where it runs now I suppose a half acre and may be more

page 174.] Q. State what you know of three sugar trees in a bottom of Guyandotte River about twenty poles below the mouth of Gilbert Creek called for as a common corner of the Morris 500000 acres, known in this case as the King tract and the Gordon Cloyd 7800 acres?

Objected to by the defendant King.

A. I dont know anything only what others pointed out to me where they stood I never saw them as I recollect of.

Q. State who pointed out the place where you were at the time and the circumstances under which the same occurred?

Objected to by defendant King.

A. Well I was at James Spratt's at the mouth of the Creek and James Spratt pointed out to me at various *time* where the trees stood and where the creek came in and so on. Then further than that my Uncle Fred Trent took me and showed me where they stood right at the mouth of the creek, he claimed that he saw them. Jim Hatfield told me the same. He was at the mouth of the creek—or he might have been as much as forty yards from the mouth of the creek when he pointed out where they stood. Then still further West Stafford told me several times where they stood. Others have pointed out and said where they stood but I am not so clear as to those the others who I have heretofore named.

Defendant King moves to strike out the question and answer

Q. Was it or not a matter of common repute in the neighborhood of Gilbert Creek that the sugar tree corner referred to above was located at the place where you say it was pointed out to you?

Objected to by defendant King.

A. It was always the report from 1848 on up *til* th[illegible] suit commenced.

Q. Describe the place pointed out to you as the former location of the three sugar trees with reference to the mouth of Gilbert Creek as it now and it formerly was, and with reference to Guyan*dote* river?

Objected to by defendant King.

A. Well it was about twenty poles below where they told me the creek run in before on the bank of Guyandotte River in a bottom that runs up Gilbert Creek containing from three to four acres.

Q. Who owned the land at the mouth of Gilbert Creek where the three sugar trees were said to have stood? at the time James Spratt pointed the place out to you?

page 175.]

Objected to by defendant King.

A. It was claimed by Lloyd Ellis at that time, but it is now owned by John W. Stafford.

Q. Had Isaac Spratt and his son James prior to that time owned that land?

Objected to by defendant King.

A. Isaac Spratt had owned it.

Q. How far from that sugar tree corner was James Spratt born and raised?

Objected to by defendant King.

A. James Spratt told me he was about six years old when his father bought and moved there. When he pointed out this place to me he was I think about sixty years old.

Q. How long ago has it been since Spratt pointed it out to you?

A. Well it has been from twenty-seven to thirty years—he pointed it out to me at different times. I used to be at his house a good deal before I bought.

Q. Is James Spratt living or dead.

A. He is dead.

Q. Were the lands that James Spratt sold you inside of the King tract?

Objected to by defendant King.

A. The land that James Spratt sold me was out of a 248 acres patented to Edward Crawford but lay inside of the bounds claimed by King.

Q. How near to the sugar tree corner did James Spratt's land lie?

Objected to by defendant King.

A. It lay about five poles off—the nearest point from it.

Q. You may now state what James Spratt told you
page 176.] about the three sugar trees at the time he pointed out the place where they had stood?

Objected to by defendant King.

A. He said that was the corner of the Cloyd and the 500000 acre survey patented to Morris

Q. Did he claim to have seen the trees himself?

A. Yes sir. It was only in a common talk such as people would have about surveys and he pointed out the place where they stood and I wont say under oath but it appears to me he showed me one of them but I have never been clear enough to state about that. I was about him a good deal before I bought from him.

Q. How far from the location of the sugar trees were you when Spratt pointed them out to you and told you what they were?

A. Some times I was right where he claimed they stood and at other times I was may be seventy five yards from there.

Q. Was the place in view when you were seventy five yards away?

A. Oh yes plain in view.

Q. Is James Hatfield, of whom you speak living?

A. My information is he is dead.

Q. Had he ever lived in the neighborhood of Gilbert Creek?

A. He lived on the Horse-Pen Fork of *Gilbert* Creek about four miles from the mouth of Gilbert Creek. I guess he was likely born there and I would suppose he lived there about thirty five years

Q. Do you know by tradition or otherwise how Gilbert Creek got its name?

A. Yes sir my information is that Joseph Gilbert was killed on that creek by the Indians and that it took its name from that.

Q. How did you get your information?

A I got it from my grandfather Smith and old *Valentine* Hatfield and the old citizens and from published accounts of it.

Q. When did that killing occur?

page 177.] A. My information was it was in 1792.

Q. Have you seen the place where Gilbert was said to have been killed?

A. Oh yes many a time.

Q. What marked the place where Gilbert was killed?

A. There was what was called a deer lick where a rock was hanging over and where he first took fright and they wounded him within a few steps of where the lick was and he run about three hundred yards and the indians followed him and tomahawked him. I have saw Lusk myself that was with Gilbert and was captured by the indians but never had any conversation with him in regard to the matter and Frederick Trent my uncle told me he met Lusk right at the place where Gilbert was wounded and killed and *burried*. And common report went on to say about them cutting their names *o* initials on a tree before that as they were coming down the creek. My uncle told me that Lusk told him that as they come down Gilbert and him cut their initials on a beech tree and Gilbert said he felt mighty bad some way I examined where I was told the tree stood and found on a tree the letters J and a G and S and *and* L. I expect I have examined them letters on that tree fifty *time* when I was a boy I took a delight in doing so—anything that related to an *indian* I somehow wanted to trace it up. Another thing I was told by my uncle that Gilbert was buried there somewhere and I looked for his grave but never could find it.

Q. State if you know by tradition or otherwise what name Gilbert Creek had before Gilbert was killed on it?

A. My uncle Bill Rife and various others told me that it went by the name of Kettle Creek just before that time. And he told me the reason it got that name. He told there were a lot of hunters traveling up long point on what we call now the twisted gun gap of Gilbert *andh* one of them had a kettle tied on him and it broke loose and rolled into the creek and they called the creek Kettle

Creek—not knowing what name the creek had they called it kettle creek he also told me before that time some called it
[page 178.] Big War Creek also the deed from Crawford to Isaac Spratt shewed that to be a fact.

Here the defendant King moves to strike out all the testimony of the witness relative to the alleged three sugar trees and the alleged pointing out trees by any person to the witness and their statements concerning the same.

And thereupon the defendant proceeded with the cross examination of the witness as follows:

Q. What was the occupation of James Spratt, when not engaged in pointing out sugar tree corners to you?

A. O he was a farmer or carrying it on; he *dident* work much himself

Q. You first became acquainted with the mouth of Gilbert Creek in 1838?

A. To the best of my recollection.

Q. Who is West Stafford?

A. He was a son of John Stafford

Q. Is he a brother of B. S. Stafford commonly called Doc Stafford?

A. Yes, he is claimed to be a brother and passes for it and is I reckon

Q. Is he older or younger.

A. West Stafford is older than Doc.

Q. Where does he live if living?

A. He is living at Lee *Elisses* at present—near a quarter of a mile up Gilbert Creek from the mouth, that is I mean Doc Stafford. West lives about three quarters of a mile up Stafford Branch about a mile from the mouth of Gilbert Creek on the *opasite* side of Guyandotte River from Gilbert Creek.

Q. When did John W. Stafford, whom you call West Stafford, point out the place where you say some sugar trees stood near the mouth of Gilbert Creek?

A. Well I would say it was about twenty years ago about the time old Irwin was a *dcrilling* the people down here about his title

Q. How did he happen to do that?

page 179.] A. Me and him was a merchandising together there then, I lived in the Isaac Spratt and Jim Spratt house there and we put goods up together, we kept goods there about a year ago together and were together pretty much all of the time. We was talking about this Irwin suit—he claimed all that country, and West *Pointed* out where *th* they stood.

Q. That was a long about 1885 or 1886 *wasent* it.

A. I think it was a little before that, my recollection is that it was along about 1882.

Q. When did your uncle Frederick Trent show you the place?

A. On his way to Parkersburg—he was a witness in the same suit up there and he stayed all night with me, and we went down and he showed me the place as near as he could. He also showed me where the creek run in as was his recollection.

Q. What suit do you refer to?

A. I refer to the King suit against the citizens.

Q. Is that the same Frederick Trent whose deposition was taken in this case at Williamson?

A. Yes sir.

Q. When did Hatfield show you this place as where you say the trees stood at the mouth of Gilbert?

A. He was a witness in the same King suit and was on his way to Parkersburg as a witness and showed it to me.

Q. You were taking a great deal of interest in the defense at that time were you not?

A. Yes sir and I have not quit yet Judge.

Q. You were energetically collecting evidence to use against King were you not?

A. I was. I consider myself one of the defendants in the suit and thought I had a right to do that.

Q. You consider yourself one yet?

A. I do.

page 180.] Q. Isaac Spratt was living at the mouth of the creek in 1838 when you first knew the place, *wasent* he?

A. Yes sir he was.

Q. He came there about 1824 or 1825?

A. That was my information from his son James Spratt. Old man Spratt died about 1863 at Tazwell Court *house*

Q. You were about his place and about the mouth of the creek from time to time from the time you first came to that neighborhood on from the first time you were there in 1838 on up to the time of Isaac Spratt's death and have been there frequently ever since, have you not?

A. I have except the years I spoke of as living down near Logan and up in McDowell. In 1874 and part of 1875 I lived in McDowell and afterwards I lived down near Logan Court house.

Q. Does any house now stand where Isaac Spratt or James Spratt formerly lived at the time you were first acquainted with the neighborhood?

A. Yes sir. I built the house myself and a son of mine Dave Trent now lives in it; I moved the old house off and put the house I built on the same seat.

Q. About what time did James Spratt first mention corner trees to you? at the mouth of Gilbert?

A. I was a boarding there in 1875—I was making a crop before I moved and he pointed the place out. I had bought and he was tending part of the farm and I was tending the other part.

Q. Do you remember when some Frenchmen came to that place looking after the Morris Grant?

A. I do.

Q. When was that.

A. I think as well as I recollect it was in 1845—I *wont* confine myself to that but it is as near as I can recollect.

Q. Who were those Frenchmen?

A. As well as I recollect one was named Emory,

page 181.] one Laferrierre, one Boinville and Lachannette

Q. Did they stay about there some time?

A. Emory *dident* stay very long Laferrierre stayed some time and Lachennette married old man Spratts daughter and Boinville stayed there until his death. They had a good deal of surveying

done while here. I now remember Lewis Chitty being there I saw him to the best of my recollection at Logan Court *house* or up about Gilbert Creek one. It runs in my mind that he or some of them jumped a board bill down here and they sold that survey and Anthony Lawson bid it in; it seems to me that it was sold by a man by the name of Laidly, I was right by when it was sold, they sold it for three hundred thousand acres.

Q. You say you never saw any marked trees there about the mouth of Gilbert Creek that you remember about?

A. I have seen marked corner of the Crawford survey there, a poplar and a beech, I have a dim recollection that Spratt pointed out a sugar tree standing at the time of my purchase but I wont state it as a fact.

Q. You purchased in about 1873.

A. Yes sir on the 8th. day of May 1873.

Q. There has been considerable shifting of names of creeks in this country has there not?

A. If there has it has been before my recollection. Gilbert Creek was called Big War Creek in some deeds and then called Kettle Creek in *others* and Gilberts Creek in others.

Q. Have you learned from reputation or tradition that the names of creeks in this neighborhood and down towards Logan Court *house* have undergone a change, if so state what you have heard and how?

A. As far as this neighborhood I *havent* heard of any but near Logan Court House I have. Docton Hinchman told me several times in his lifetime that Island Creek now was once called Big Madison Creek and Madison Creek now was called Island Creek.

And when he was a small "shirt tail" boy the old
page 182.] citizens held a meeting and changed the names of them
creeks; if he said anything more I dont memorize it, I mean if he said anything about any other creeks being changed.

Q. How old was Doctor Hinchman at that time?

A. I suppose he was about 65 years of age.

Q. And when did he tell you this?

A. About 1855 I suppose about that time or may be up to 1860

Q. Is Doctor Hinchman now living?

A. No sir.

Q. How big a boy is a shirt tailed boy?

A About eight years old

Q. Do you know whether Hinchman was present at the meeting?

A. I do not know that he was present. He said he was

Q. Where did he live at the time he told you this?

A. Down at the mouth of Madison Creek

RE-DIRECT EXAMINATION.

Counsel for contesting defendant move to strike out that part of the examination of the witness made by counsel for King relating to the acts of the French people who came to the mouth of Gilbert Creek as well as that part which relates to the change of names of Island Creek and Madison Creek

Q. How long have you been acquainted with Guyandotte River at the mouths of Island Creek and Madison Creek?

A. About sixty years.

Q. Is there at the mouth of Island Creek any natural object that would suggest the name "Island Creek"?

A. Yes sir there is. There is a large body of land there that lays between Island Creek and Guyandotte River in the form of an island. It is a large body of farming land and the water runs all around it and naturally forms an island. There was a battle there between the whites and the *indians* and General Madison was commander of the whites is my recollection. This battle

page 183.] I understand was called the battle of the Islands of Guyandotte. It is my understanding that this battle took place somewhere between 1760 and 1775

Q. Is there anything at the mouth of Madison Creek that would suggest the name "Island Creek"?

Objected to by defendant King.

A. If there is I dont know it. There is an island below there called Cloyds Island, is my recollection of it.

Q. Has there at any time in your recollection been room enough in Guyandotte River at the mouth of Madison Creek for an island?

A. No sir there has not, as I recollect it.

Q. What is the size of Madison Creek?

A. My recollection is that it is from two and a half to three miles long.

RE-CROSS-EXAMINATION.

Q. What was the object of changing names of these creeks, if you know or ascertained from Hinchman?

A. Well as I understand, it was to defeat big surveys and it seemed to me like it was a Clinton Survey I dont know whether there is any survey of that kind or not.

And further this deponent saith not.

ALEXANDER TRENT, SR.

1 day 1.00.

page 184.] Resumed the taking depositions at the town of Logan for the contesting defendants, on this the 19th day of July 1902, pursuant to adjournment.

Present: Counsel for the contesting defendants and Judge Stiles counsel for the defendant H. C. King.

EDMOND BROWNING, a witness introduced by the contesting defendants after being first duly sworn upon oath testified as follows:

EXAMINED

By Mr. Campbell.

Q. State your age, residence and occupation ?

A. I was 86 years of age on the 4th of last May, I have lived the most of the time on Island Creek, Logan County, where I live yet, and I am a farmer.

Q. Where *wher* you born and reared?

A. I was born in Washington County Virginia and moved from that to this county when I was a small boy; there was no cut out roads between that place and here at that time and when I come I was so small that where the roads were rough they set me off and the rest of the way *were* the roads were smooth I could ride on horse back.

Q. Where did your father settle when he first came to this county?

A. On Island Creek within two miles of Cow Creek.

Q. Who were then living on the creek when you first came there?

A. There was two of the Currys and two of the Ellises, is all that I recollect of on that fork of Island Creek.

Q. What was the name of Island Creek at that time?

A. The same name it is yet.

Q. Has it been known by any other name since you came here?

A. No sir.

Q. Was there any tradition or repute among the old settlers on that creek or among any of the old people of Logan County whom you knew that Island Creek was ever called Gilbert Creek?

page 185.] Objected to by the defendant King.

A. I never heard it sir in time until this suit got up here.

Q. Are you acquainted with Gilbert Creek and Horse-Pen Fork there?

A. Oh yes sir I have been from the head to the mouth many a time over it.

Q. State if you know by tradition or otherwise, how it acquired the name of Gilbert?

A. Well sir I could just state what I learned of it by a man by the name of Lusk when this county and Cabell were all one. He *use* to stop at my *father* house when going to Cabell Court. He said that a party of hunters went to a deer lick on the creek for deer and when they came to the lick they saw a rock swing-

ing over the lick and about that time the Indians *firsed* on them and shot him (Lusk) through the hand and Gilbert was also shot and he ran and the Indians followed him and killed him and the creek took its name from this event. He said that the Indians captured him (Lusk) and brought him right across there, at the mouth *or* Island Creek to what is called the back bone and there was only one settler on the bottom at that time—old Mr. Dingess.

Q. You may state if you know by tradition or otherwise how the horse-pen fork of Gilbert acquired its name?

A. Objected to by defendant King.

A. The way I understood it was *out* man right at the forks of Gilbert split rails and built a pen for three horses, for their camp when they were hunting. I recollect seeing the pen, it was *recked* and *prtey* much down but I could see where they had it fenced in. That was at the forks of the Horse-Pen and the one fork was called Horse-Pen and the other was called Gilbert—up to the mouth.

Q. Did any one ever point out to you the deer lick on Gilbert's Creek where it was said that Gilbert was shot, if so who?

A. Yes sir I was showed the deer lick and I was passed it I *couldent* tell you how many times; I was camped on that creek at the time I saw it. My parents was by and they

page 186.] had heard of it and they said that was the lick—my father was by and old Mr. Spratt he lived at the mouth of it and he came up and he said that was the place also.

CROSS EXAMINATION

By Judge Stiles.

Q. How old were you to the best of your knowledge when you moved to Island Creek?

A. Well I can only answer that in this way when we moved here I was so small that when we moved here they had to set me

off the horse when we come to a rough place in the road and when they passed that they put me on the pack again.

Were you probably about eight or ten years old?

A. I reckon I was about some where near that.

Q. How long was Lusk kept a captive by the Indians, if you know?

A. I dont recollect. he said that after camping on the point here in the morning the Indians took him on and he was rescued but I dont remember that he said when. *Im* have heard that he was rescued near the Ohio River but dont remember who told me that.

And further this deponent saith not.

his
EDMOND X BROWNING
mark

Witness claims 25 miles and 1 days attendance.

page 187.] C. H. GORE, a witness introduced by the contesting defendants, after being first duly sworn upon oath testified as follows:

EXAMINED
By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age 54 years, reside in Logan Court House and by occupation a farmer—I have been sheriff of Logan Couñty one term and surveyor of the county one term.

Q. Did you ever retrace any of the lines of the Austin Nichols survey of 142000 acres made in 1795? And latterly *know* as the Dewit Clinton survey, if so what lines did you survey?

Objected to by defendant King.

A. I reckon I have. Mr. Buskirk got me to do some work for him and sent *he* up the river to the mouth of the Winding Shoal Branch and my recollection old man Mulling told me where to begin and I begin about fifty yards below the mouth of the branch and I run up the river to the mouth of Huffs Creek and up Huffs Creek about eight miles and to a corner was

said to be a corner of that survey—my recollection is it was a beech and poplar, standing up in the mouth of the Beech Branch of Huffs Creek, then I run from there to cross onto Buffalo, then I come back to the starting point at the Winding Shoal Branch and run the creek or crossed Rum *Crm* Creek to the Spruce Fork of Cole River (Coal), then I ran up the Spruce Fork of Coal up to where Lee White lives near the head of Spruce—that is all the work I ever done on that survey.

Defendant King moves to strike out the answer of the witness

Q. What paper did you have to run by?

A. I cant tell you that it was a paper that Buskirk gave me and it has been so long ago that I cant now tell you. I dont remember what the calls were, I remember the ground I went over is all I now can tell.

Q. How were the trees marked if at all, which you found on Huff at the mouth of Beech Fork?

page 188.] Objected to by defendant King.

A. They was marked as we mark corners—three marks on each side of the tree.

Q. Which sides were they marked on with reference to the lines with which you ran?

A. I don't know that I could tell which side they was marked on—it seems to me they *fit* the work I was on.

Q. Is there a bottom at the point where you began?

A. Yes sir. I began right at the lower end of the bottom that runs down below the Windong Shoal Branch.

Q. Was there any island in the river near that point?

A. Yes sir.

Q. Where was your place of beginning with reference to that island?

A. Just about opposite the upper end of it.

Q. Did you run the full length of the last line you started on

A. No sir—just run to where I struck Spruce and then turned and run up Spruce.

Q. What was your object in running up Spruce?

A. Well I think some parties wanted to divide that land and that was my orders and I *didont* ask any questions about it; I was not running any line of the survey then.

In this connection contesting file with the commissioner the certified copy of the Austin Nicholas survey spoken of and the plat accompanying the same.

Counsel for the defendant King objects to the filing of said survey and the introduction of the same in evidence and moves to strike out all of the testimony of the witness.

Q. Into what river does Twelve Pole empty?

Objected to *be* defendant King.

page 189.] A. Into the Ohio River.

Q. How many main forks has Twelve Pole River?

A. It has two about equal forks.

Q. Where does Twelve Pole River and the two forks thereof, lie with reference to the Guyandotte River and the Big Sandy River?

A. It lies between them.

Q. Where are the head waters of the two forks of Twelve Pole with reference to Island Creek?

A. The right fork of Tyelve Pole heads up near the Mud Fork of Island Creek and Copperas Mine Fork of Island Creek and the left fork comes along pretty well to Island Creek but more into Harts Creek.

Q. How far in your opinion from *is* the head of the Mud Fork of Island over to the head of the left fork of Twelve Pole?

Objected to by defendant King.

A. There is just a ridge between them—not over a mile.

Q. Are you acquainted with what is called the Little Tide, passing at the base of the hill from Guyandotte River over to Island Creek?

A. Yes I am acquainted with it but dont know that it is called the Little Tide, it is always spoken of as the Tide.

Q. About how wide is the tide?

A. I suppose it is eighteen or twenty feet wide. It is not as wide now as it was some years ago, it is filling up.

Q. What is the length of it?

I expect one hundred and fifty or two hundred yards long.

CROSS EXAMINATION

None.

And further this deponent saith not.

C. H. GORE.

Witness claims 1 day.

page 190.] SIMPSON ELLIS a witness introduced by the contesting defendants after being first duly sworn upon oath testified as follows:—

EXAMINED

By Mr. Campbell.

Q. State your age, residence and occupation?

A. I am *growing* on 64 years old, I reside on the Mud Fork of Island Creek in Logan County, and by occupation a blacksmith and a farmer.

Q. Where were you born and raised?

A. On Island Creek.

Q. Were you acquainted with any of the old settlers on the waters of Island Creek if so name as many of them as you can recall?

A. Well I was acquainted with old Barney Curry, Johnnie Vance, Rafe Steel, Evan Ellis, Philip Ellis, Frankie Browning, Major Browning, Jesse Browning, Edmond Browning, *Jonnie* Curry, James Browning, John Dempsey, Joseph Dempsey, Josie Saisden, *Jounie* McCloud, Billy Dempsey, Jerry Vernatter, James Vernatter, Samuel Vernatter, William Dempsey, Isaac Browning and a great many others. These people that I have named are all dead except Edmond Browning.

Q. Did you ever visit the homes of these old people whom you have mentioned when you were a boy?

A. Yes sir *ever* one.

Q. Did you ever hear these old people talk about the history of their locality and of the early settlers and the names of creeks and so on?

A. Yes sir I have heard them talk about the names of creeks.

Q. Was there any tradition among the people or earlier settlers on Island that Island Creek was ever called Gilbert Creek?

A. No sir I never heard it called Gilberts Creek. Not in these days I have heard it called Gilbert Creek since.

Q. Since when have you heard it called Gilbert Creek and by whom?

A. Since this suit has been going on I have heard them talking at being called Gilbert Creek is all I know about it.

Q. By whom have you heard it talked?

page 191.] A. I can't tell just by whom I heard it talked —I just heard it talked that the King people claimed it as Gilbert. When I was just a small boy my father moved over to one fork of Gilbert Creek called the Horse Pen and that was called Gilbert Creek up there.

Q. How long did you live on the Horse-Pen Fork of Gilbert?

A. I think as well as I remember it was two years, we then moved back to Island Creek.

Q. You may state *of* you know by tradition or other wise, if you know how Gilbert Creek acquired its name?

A. I always understood that it was by a man being killed by the Indians on the creek; I have been showed by the old settlers over there where his grave was and his name on the tree.

Q. What was the name of the man that was killed by the *indians?*

A. Gilbert—was the name that was cut on the tree, there

was some initials but I don't recollect what the initials was now; my brother-in-law lives right there very close to where he was killed his farm adjoins right where he was *kille* and I was there very frequently. .

Q. How many of the old settlers have you heard speak of the fact of Gilbert being killed on Gilbert Creek?

A. A great many, I don't just know how many; Old Peter Cline, and Humphrey Trent and Davy Cline and Jonnie Smith, all live right there and old Thomas Hatfield, I have heard them speak of it.

Q. Did you ever hear those whom you have mentioned as living on Island Creek speak of this fact?

A. Yes sir I have heard them talk of it.

Q. Did you ever hear before this suit began people from other parts of the county speak of that historic fact?

A. Yes sir I think I have.

page 192.] CROSS EXAMINATION

By Judge Stiles.

Q. How old were you when you moved from Island Creek to Gilbert?

A. I was five or six years old. I was just a boy.

Q. Was the full name of Gilbert or the full name of Lusk cut on the trees you speak of, or what was cut on them?

A. I can't say that there was, it has been a good long time ago, and I just know that Gilbert and Lusk was cut on the beech tree.

Q. Did you ever hear, prior to the institution of this suit that Gilbert Creek, had ever been called anything but Gilbert or that Island Creek had ever been called any thing but Island Creek?

A. I don't know that I did prior to this suit, I have the talk since the suit or before I don't remember which, that *Gilber* was called Kettle Creek before Gilbert was killed on it.

Q. You testified at Abingdon in 1899 in the case of King against Watkins and *other* did you not?

A. Yes sir.

Q. You were there asked whether you had heard of any change in the name of Gilbert Creek and stated that you had not, did you not?

A. Yes sir I think I did.

Q. When is it not a fact that what you have heard with regard to Gilbert Creek having been known by any other name you have heard since that time and not before?

A. Well it might have been I aint certain, I just heard some body talking about it but aint certain when.

Q. Do you know Buffalo Creek?

A. Yes sir.

Q. Did you ever hear of that being called any thing but Buffalo Creek prior to the institution of this suit?

A. No sir I don't know that I did.

Q. Did you ever hear of Island Creek being called anything but *island*, in years back?

A. No sir not prior to this suit.

And further this deponent saith not.

SIMPSON ELLIS.

Witness claims 1 day and 6 miles.

page 193.] Contesting defendants file with the Commissioner the following papers.

A deed from James Kent and others to James P. Christian dated 30th. of January 1838.

A deed from James P. Christian and wife to John Stafford, bearing the 5th. day of April 1841.

A certified copy of Samuel Moore survey of 40162 1/2 acres, with *plact* accompanying same.

Certified copy of survey and plat of John Breckenridge survey.

Certified copy of survey and plat of the Edward Dillon 50,000 acres.

Certified copy of survey and plat of the Samuel Moore 32955-1/2 acres.

Certified copy of survey and plat of the Alexander Walcott 100000 acres, on Knox, Peter and Blackberry Creeks.

Certified copy of survey and plat of 376 acres made for Edmond Thomas and John Satchell, situated on War Creek.

Certified copy of the survey and plat of 3000 acres on War Creek of Sandy River made November 17th. 1787 for Thomas Madison and Andrew Lewis.

Certified copy of plat and survey of 1630 acres made for Edmond Thomas and John Satchell.

Certified copy of plat and survey of 1250 acres on War Creek of Sandy River, made for Thomas Huff March 10th. 1789, adjoining the madison 3000 acres.

Certified copy of the plat and survey of the King tract, made by Henry B. Harman, made in 1847.

Certified copy of the petition of John R. Reed Trustee, filed in The United *State* Circuit Court on April 19th, 1890.

To the filing of each and every of which deeds, surveys, plats and other documents and to the *admision* or use of any of them as evidence defendants King by his said counsel objects and moves to strike same out.

page 194.] Contesting defendants also file with the commissioner certified copy of deed from James R. and David F. Kent to Joseph Perry, dated January 30th. 1838.

To the filing of which the defendant King objects and moves that the same be stricken out.

Each of the foregoing papers are filed by the commissioners with the papers in this and for the purpose of identification are marked as filed of this date and signed by the Commissioner.

The depositions not being completed by consent these proceedings are adjourned to Thacker, Mingo County, West Virginia, to meet at said place on Thursday July 24th. 1902, in

pursuance of which agreement the commissioner and counsel for the contesting defendants and H. C. King, met at said place at the day and hour appointed and the contesting defendants resumed the taking of depositions.

HENRY DANIELS, a witness introduced by the contesting defendants after being first duly sworn deposed as follows:—

EXAMINED

By Mr. Shepard.

Q. State your age, residence and occupation?

A. I can't tell my age point blank but it from seventy five to eighty years, I live in Pike County Kentucky on Pounding Mill Branch and am a farmer.

Q. How far do you live from Thacker Creek?

A. About five miles I reckon.

Q. Where were you born and raised?

A. I was born and raised in Pike County Kentucky right across the river here.

Q. How far from Thacker Creek?

A. About a mile I was born right up here at the mouth of Grapevine Creek.

Q. Were you acquainted in your boyhood days with the old men then living in the neighborhood of Thacker Creek?

A. I was acquainted with Old Jonnie Ferrill
page 195.] that lived here at the mouth of Thacker Creek; I was acquainted with old uncle Ephram Hatfield and old uncle Ali Hatfield and all them old fellows; I was acquainted with all them old citizens when a boy growing up.

Q. Did you hear the old citizens you have mentioned relate their early experiences in this locality?

A. Yes I have heard them talk over about being in their hunting.

Q. Was there then or has there since been a reputation or tradition among the old people living in the community of Thacker Creek that it had ever been called Turkey Creek?

A. No sir I never heard it *til* now—this thing got around here and that is the first I heard of it.

Q. Were you well acquainted with James Vance who lived on Thacker Creek?

A. Yes sir.

Q. In all of your experience with those old settlers the Ferrills the Clines, Hatfields and others did you ever hear any one claim that Thacker Creek had been called Turkey Creek?

A. No sir I never.

Q. Did you in your boyhood days know of any *think* on Thacker Creek that might have caused a person passing thro' to have called it Lick Creek?

Objected to by defendant King.

A. No sir.

Q. Was there a large deer lick on Thacker Creek not far from its mouth when you first knew it?

A. Yes sir.

Q. Do you know how the creek got the name of Thacker?

A. Well they told me that the way it got the name of Thacker was that an old man lived on it by that name—my father told me.

Q. Were you ever shown the place where Thacker was said to have lived?

page 196.] A. Yes sir.

Q. Where was it and who showed it to you?

A. My father showed it to me at the mouth of what they called the Tobacco Fork—that is where they said he was stationed there.

Q. About how old were you when your father showed to you where Thacker had lived?

A. I reckon I was about sixteen or seventeen along there somewhere.

Q. Was the ground cleared at that place then?

A. It had been cleared there and had growed up.

Q. About what was the size of the timber that had grown

up in the Thacker clearing at the time your father pointed it out to you?

A. Why it was right smart sized saplings and some of them was nearly as big as a mans body and there was some bushes and a few apple trees.

Q. Was the old house there still standing?

A. There was some old building standing but to the best of my recollection there was no cover on it; there was an old log house of some kind standing there. They had about rotted down.

Q. About how far is that place from the mouth of Thacker Creek?

A. I guess it will come close to three miles. I never measured the distanee but I expect it is about that far.

Q. Was the old Thacker Mill on Thacker Creek at the mouth standing when you can first remember?

A. I *dident* see it.

Q. Who was living at the mouth of Thacker at your earliest recollection of the place?

A. Uncle Jonnie Ferrill.

Q. About how old a man was John Ferrill then?

A. I guess he was up in seventy.

Q. When did your father die?

A. I don't know point blank but I think he has been dead about ten or twelve years.

page 197.] Q. Are you acquainted with Gilbert Creek of Guyandotte River?

A. Yes sir I have been there time and again at the mouth of Gilbert.

Q. Do you know from hearing old people who are now dead and people who are yet living how Gilbert Creek got its name?

A. They said that it got it by the *indians* taking a man by the name of Gilbert and killing him there.

Q. Did you frequently pass up and down Thacker Creek in your boyhood days?

A. Yes sir.

Q. Where would you be going?

A. I was going over to Mate Creek.

Q. How would you travel to get to Mate Creek?

A. Go up *Tacker* and out the head of Thacker and then crossed the hill and went down on to one fork of Mate on what they call the double Camp as well as I remember.

Q. What families of people lived there on Mate Creek at that time you mention?

A. Old Uncle Ephram Hatfield and Old Uncle Ali Hatfield and all them old set of Hatfields lived over there.

Q. Is Mate Creek the next creek west of Thacker?

A. Yes sir to the best of my knowledge it is.

Q. Where on Thacker Creek was the deer lick?

A. About a half a mile up from the mouth at what they call the Lick Fork. The Lick Fork comes in on the left hand side of the creek going up.

CROSS-EXAMINATION

By Judge Stiles.

Q. What was your fathers name?

A. Richard Daniels.

Q. Is James Vance now living if not how long ago did he die?

A. No sir he is not living. He has been dead seven or eight or nine years or may be longer than that.

page 198.] Q. There were deer licks on other creeks than Thacker were there not, during your early life?

A. Yes sir there were lots of deer licks.

Q. Do you know a fork of Thacker Creek that is called Turkey Fork?

A. No sir I don't.

Q. Do you know what old man Thacker's first name was?

A. No sir I don't.

Q. Did you ever hear of Gilbert Creek having been known by any other name than Gilbert at any time?

A. No sir.

Q. Did you ever hear any one but your father tell how Thacker Creek got its name?

A. No sir and these other men they all said that that is the way it got its name by Thacker.

RE-DIRECT EXAMINATION.

By Mr. Sheppard.

Q. How long had your father lived in this country?

A. He was raised here, that was my understanding he was raised here right up on the river here.

Q. Were you well acquainted with John Ferrill, who, lived at the mouth of Thacker Creek?

A. Yes sir.

Q. Was he a minister of the Gospel?

A. Yes sir.

Q. What minister married you?

A. John Ferrill.

And further this deponent saith not.

his

HENRY x DANIELS.

mark.

Witness claims 1 day and 10 miles.

page 199.] JAMES McCOY, a witness introduced by the contesting defendants after being first duly sworn upon oath testified as follows:

EXAMINED

By Mr. Campbell.

Q. State your age, occupation and place of residence?

A. Age 60 years, occupation farmer and I now live on Peter Creek in Pike County Kentucky.

Q. Where were you born and reared?

A. I was born in Logan County Virginia, about fourteen miles below the mouth of Thacker Creek and I was raised down there where I was born.

Q. About how old were you when you became acquainted with Thacker Creek?

A. Well I will say ten years old, I was very small.

Q. Who was living at the mouth of the creek at that time?

A. Old Jonnie Ferrell.

Q. Did you become acquainted with him?

A. Yes he was my Uncle.

Q. Did you visit any at his house while you were a boy and while he was yet alive?

A. Yes sir I was at his place many a time—come with my father and mother and come by myself?

Q. What other old men did you become acquainted with who were living along Tug River above and below the mouth of Thacker Creek?

A. Old Uncle Jakey Philips below, Old Uncle *Uncle* Dicky Ferrell and Joseph Hatfield, Old Uncle Jake Cline above, that was the old settlers of that day, afterwards as I growed up there was men like we are now a plenty of them.

Q. Did you ever know of any reputation or report among the people whom you knew in your early life to the effect that Thacker Creek was once called Turkey Creek?

A. Never did sir.

page 200.] Q. Did you ever know of a report or reputation among the people that Thacker was once known as Turkey Creek?

A. No sir.

Q. When you first became acquainted with the creek who

if any one besides besides John Ferrill lived on Thacker Creek?

A. Not any body to my knowing.

Q. How soon after your first *acquaintence* did James Vance settle on Thacker Creek?

A. Well a good long while. James Vance settled on Thacker Creek about 1866.

Q. Did you ever know personally a man by the name of Thacker, who is said to have at one time lived on Thacker Creek?

A. No I never knew him. I have heard him spoken of.

Q. What if anything did you ever hear about him?

A. Why I just heard of a man being settled here and this creek took its name from Thacker.

Q. How long, if you know, had he been gone when you first became acquainted with this creek?

A. I *couldent* answer that I don't remember of ever hearing it spoke of as to how long he had been gone and where he went to.

Q. What is the name of the first creek on the West Virginia side coming into Tug River below Thacker Creek?

A. Mate Creek is the only creek of any size.

Q. What is the name of the first creek coming into Tug River on the Kentucky side below Thacker.

A. Blackberry.

Q. Where was your father born and reared?

A. He was born in Maryland I think I heard him talk.

Q. How early in life did he come to Tug River?

A. Well sir he come here as well as I remember—I heard them talk about it, in 1785.

Q. What old persons did you become acquainted with on Mate Creek in your early life?

page 201.] A. Old Jonnie Murphy, Old Uncle Eph Hatfield and Old Ali Hatfield were the early settlers.

Q. Were you acquainted with Gilbert Creek, if so how early in life did you know the creek?

A. Well I was a young man might have been eighteen or twenty years old before I *seed* Gilbert Creek?

Q. You may state what you have heard in early life as to how that Creek acquired its present name and from who you learned the fact?

A. A man by the name of Gilbert was so said to have been *kiled* by the *indians*. I have heard my father and other old folks talk it.

Q. You may state whether in your early days you knew of a deer lick on Thacker Creek, if so state where it was?

A. Yes sir just up the creek on the right hand side of the Lick Fork, the Lick Fork is the left hand fork of the creek as you go up.

Q. You may state if you know where it is said that Thacker *Livend* on that creek?

A. I don't know that I ever heard the place identified more than that he settled on Thacker creek.

CROSS-EXAMINATION

By Judge Stiles.

A. Did you ever hear of Mate Creek being known or called by any other name than Mate?

A. No sir I never did.

Q. Is your father now living if not how long has he been dead?

A. No sir he has been dead about eighteen years.

Q. About how old a man was he at the time of his death?

A. He claimed to be about one hundred years.

Q. Do you know how old he was when he came to this neighborhood?

A. No sir I don't.

Q. Did you know of any deer licks on any creek except on the Lick Fork of Thacker?

page 202.] A. O yes on all these creeks, there was Mate, and Grapevile and Beech and Blackberry and Peter all *ad* licks on them.

And further this deponent saith not.

JAMES McCOY.

Witness claims 1 day and
10 miles.

PEYTON JOHNSON, a witness introduced in behalf of the contesting defendants after being first duly sworn upon oath testified as follows:—

EXAMINED
By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age sixty four years, I reside at the mouth of Peter Creek in Pike County Kentucky and by occupation farmer.

Q. How long have you lived in the neighborhood of Thacker Creek?

A. It has been about forty-nine or fifty years I suppose.

Q. Who if any one was living at the *nouth* of the creek when you first knew it?

A. Old Uncle Jonnie Ferrell.

Q. What old people did you become acquainted with then living on Tug River above and below Thacker Creek?

A. Old Uncle Jake Cline, Old Uncle Ephram Hatfield there was two Ephrams I was acquainted with both of them, old Uncle Jonnie McCoy, Daniel McCoy, and old Uncle Henry Davis and old Jake Ferrell and Dickey Ferrell and old Jonnie Ferrell, and I *ws acquainte* with old Granny Mounts—Old Aunt Peggy.

Q. Did you frequently visit the homes of these old people or meet them at gatherings and hear them talk about their neighborhoods and about the people and country?

A. Some of them I visited and some of them I would just meet with at other places.

page 203.] Q. Was there any tradition or repute among those old people that Thacker Creek was once called Turkey?

A. I never heard of it.

Q. Was there in your earliest recollection any person living on nor near Thacker Creek by he name of Thacker?

A. There was none here when I come here. If there was I don't have no recollection of it.

Q. Were you ever on Gilbert Creek?

A. Yes sir.

Q. How did that creek acquire its present name?

A. Why I always heard it that it was by the *indians* killing a man by the name of Gilbert.

Q. From whom did you hear this?

A. From some of the Trents and Clines and old Uncle John Smith. I heard them and the Mounts' all talking about it.

CROSS-EXAMINATION

By Judge Stiles. None.

his

PEYTON x JOHNSON.

mark.

Witness claims 1 day and 8 miles.

page 204.] It is ordered that these proceedings *by* adjourned until tomorrow morning. to meet at Devon, Mingo County, West Virginia.

J. T. GRAHAM,
Commissioner.

Met this the 25th. day of July at Devon, Mingo County West Virginia, pursuant to adjournment on yesterday: Present

Counsel for the contesting defendants and counsel for defendant H. C. King.

DANIEL WOLFORD, a witness introduced by the contesting defendants after being first duly sworn upon oath testified as follows.

EXAMINED
By Mr. Shepard.

Q. State your age, residence and occupation?

A. I will be 74 this fall, I live on Peter Creek and am a farmer.

Q. Where you born and raised?

A. Near the forks of Peter Creek. I have lived *ther* all my life.

Q. How far is that from Thacker Creek?

A. About six miles and may be a little upwards.

Q. When did you first become acquainted with Thacker Creek?

A. Ever since I was a chunk of a boy and knowed anything I was acquainted with the creek.

Q. Who lived at the mouth of Thacker Creek, at your *earlies* recollection?

A. John Ferrell.

Q. Were you frequently at the house of John Ferrell?

A. Yes sir I have stayed with him when I was a young man. He was a preacher and we could go to meeting there; my father and mother belonged to his church.

Q. Were you *acquainteed* with Ruben Thacker?

A. No I *wasent* acquainted with him.

Q. Did you learn from old people living in that neighborhood when you were a boy how Thacker Creek took its name?

A. Well it was said that it was by a man by the name of

Ruben Thacker living on that creek and it took its name from him.

page 205.] Q. What old men living in that country did you become acquainted with them when you were a boy?

A. Old Johnny Ferrell and old Jake Cline, I used to *by* corn of *hik* when I was a boy he lived right across from the mouth of Peter on the Virginia side. Old Henry Davis and Old Ephraim Hatfield I *knowed* them, I *knowed* old *Davy* Mounts he lived up on the river above old Jake Cline I have been to his house a many a time.

Q. Was there at any time in your recollection a reputation or tradition among those old men that Thacker Creek was originally called Turkey Creek?

Objected to by the defendant King.

A. No sir I never heard it called any thing but Thacker. If it was called Turkey Creek I never heard of it.

CROSS-EXAMINATION

By Judge Stiles.

Q. Were you acquainted up and down Tug River above and below Thacker Creek and if so how far each way?

A. Well I was acquainted down to the mouth of Pond and up Tug River I was acquainted to the mouth of Beech. I used to go to the mouth of Pond *do* trade.

Q. Were you acquainted with Buffalo Creek, of Tug River?

A. No sir I was not acquainted with it. I never *travelled* around much. I *wwas* always a weakly and sickly man and *travelled* but very *liyttle*.

Q. You have heard of Buffalo Creek, a branch of Tug River, have you not?

A. Yes sir I have heard of it.

Q. Do you know whether it comes into Tug River above or below Beech Creek?

A. No I don't know anything about it.

Q. You are not acquainted down the river as far as Buffalo Creek are you?

Q. No sir.

page 206.] Q. You never heard of any Buffalo Creek up above the mouth of Knox Creek did you?

A. No sir.

And further this deponent saith not.

his
DANIEL x WOLFORD.
mark.

Witness claims 3 days and
20 miles travel.

JOSEPH SIMPKINS, a witness introduced by the contesting defendants, after being duly sworn upon oath testified as follows:

EXAMINED
By Mr. Sheppard.

Q. State your age, residence and occupation?

A. I am 59 years, I reside at Devon, West Virginia, I am engaged in the mercantile business.

Q. Where were you born and raised?

A. In Logan County—now Mingo County, on Beech Creek. I lived there until I was 9 years old and have lived at different places in the country ever since.

Q. State what places your earlier life was spent in?

A. Part of the time at the old Dicky Ferrell farm below Matewan and part of the time at the old Johnny Ferrell farm at Thacker I then moved back to the old home place on Beech Creek and then moved here to my present residence.

Q. Give the names of the old men living in the country around Thacker Creek that you became acquainted with when you can first remember?

A. Old Jonnie Ferrell lived at the mouth of Thacker Creek,

old Richard Daniels lived just above the mouth of Thacker Creek on the Kentucky side nearly opposite the mouth of Grapevine creek, old Jacob Cline lived just above the mouth of Grapevine Creek about three miles above the mouth of Thacker Creek. That is all that I remember. Over on Mate Creek from the head of Thacker Creek old Ephram Hatfield lived, Eli Hatfield and Herndon Hurphy I think I knew David Mounts he lived about five miles east of Thacker.

page 207.

Q. In your boy-hood days did those old men talk of their early experience in that country?

A. Yes sir.

Q. About what were the ages of those old men when you first remember them?

A. Well they ranged I would say from forty five to seventy years.

Q. Were any of them among the first settlers of that section of country?

Objected to by defendant King.

A. I have heard them say they was.

Defendant King by his counsel moves to strike out the answer of the witness.

Q. Did there at any time in your recollection exist among the old men you have spoken of a reputation or tradition that Thacker Creek was originally called Turkey Creek?

Objected to by defendant King.

A. No sir.

Q. Has such a reputation or tradition over existed in the neighborhood of Thacker Creek, within your recollection?

A. No sir not to my knowledge?

Q. Have you ever heard of Thacker Creek being called Turkey Creek, by any of the people living in the country around about Thacker Creek?

A. No sir.

Q. When did you first hear of the contention that Thacker Creek was at one time called Turkey Creek?

A. Yesterday morning I believe—it was the day before yesterday morning. I heard it from Mr. Shepard in a conversation in regard to testimony that had been taken at Welch which Mr. Shepard told me that Hiram Christian had stated in his deposition that some one had told him that Thacker Creek was once called Turkey Creek.

page 208.] Q. Did you ever know Ruben Thacker?

A. No sir I only heard of him.

Q. Where was he reputed to have lived?

Objected to by defendant King.

A. On Thacker Creek.

Q. Do you remember seeing the place where he was said to, have lived?

A. Yes sir.

Q. What was its *appearence* when you can first remember it as to when the place had been occupied?

A. There was an old building rotted down and a small patch of land grown up with fairly good sized saplings. From all *appearence* it looked like it might have been twenty or thirty years since it had been occupied.

Q. Was there ever a deer lick on Thacker Creek, if so give its location and description?

A. Yes sir there was a deer lick just up in the mouth of Thacker—or rather in the mouth of the Lick Fork of Thacker Creek. Thacker Creek makes very nearly equal forks about two hundred yards from its mouth and about one hundred yards up in the mouth of the left hand fork was where the deer lick was situated—right at the base of the hill and close by the creek. I killed some deer there myself. This was a large lick, possibly the marsh was some thirty or forty feet in circumference and its *appearence* when the game was plentiful and it was used by the deer was that of a stock yard—all beat down smooth around and the weeds were tramped down and killed off. At the licks there was always a very plain road coming

into the lick which was made by the deer; they always came and returned by the same route when not molested.

Q. At what distance could those licks and trails and particularly that one be seen or discovered?

A. Well about two hundred or two hundred and fifty yards, you could see that one quite a distance.

page 209.] Q. Is the mouth of the Lick Fork of Thacker Creek *visable* to one passing up and down Tug River on the West Virginia side?

A. Yes sir.

Q. How far is from your old home on Beech Creek to Thacker Creek?

A. Seven miles going the way we always went.

Q. What is the distance from the old Dicky Ferrell farm where you lived at one time to the mouth of Thacker Creek?

A. Well that is seven miles.

Q. Inside of what large survey is the land on Thacker Creek and on the river bottom below Thacker Creek?

Objected to by the defendant King.

A. John Green thirty thousand acre survey.

Q. If you know you may state from whom old Johnny Ferrell, old Jacob Cline got their title or claim of title to the land located on the river at the above Thacker?

A. I think John Ferrell obtained his title from John Lawson.

Q. From whom did John Lawson get his title or claim of title?

Objected to by the defendant King.

A. Cushing and some one else I just don't remember but I think there was two grantors.

Q. How early in your life did you know Colonel George R. C. Floyd?

A. I think I was about sixteen years old when I first became acquainted with Floyd.

Q. Where did he live from the time you first knew him until after the war?

A. When I first knew him he was living at Warfield Kentucky and he then after that I think in 1860 or 1861 moved to the Trace Fork of Pigeon in Logan County. I know that as it was at the breaking out of the civil war. I had left here—or left Thacker Creek where I was then living and went over on to the Trace Fork of Pigeon to stay with one of my sisters in order to get out of reach of the Federal troops or home guards and while I was staying there Floyd was moving to the Trace Fork of Pigeon. My understanding he was moving for the same reason I did.

page 210.]

Q. Did you afterwards volunteer and if so when?

A. I did afterwards in the month of December 1861.

Q. How far up Trace Fork of Piegon was the place to which Colonel Floyd moved and lived?

A. Why it was some seven or eight miles I don't just know the exact distance.

Q. Did Colonel Floyd ever live to your knowledge or information on Pigeon Creek?

A. Not except living on the Trace Fork of Piegon Creek.

Q. What was your wife's fathers name?

A. Ephram Hatfield.

Q. Where did he live?

A. He lived on Mate Creek.

Q. How long has he been dead?

A. About twenty three years.

Q. *Hoe* old was he at his death?

A. Sixty nine years old.

Q. Were you *thououghly* well acquainted with him and were you about his house a *goo-* deal and hear him talk about the early settlement of the country and the names of the people and the creeks and localities?

A. Yes sir.

Q. Did you ever hear him say that Thacker Creek was once called Turkey Creek or that he had heard that it was so called?

A. No sir.

CROSS-EXAMINATION

By Judge Stiles.

Q. You don't know what he said to other people on that subject do you?

A. No sir.

Q. In what year did you first know Floyd?

A. I think it was about 1858 or 1859.

Q. He was then living in Kentucky and afterwards moved back to Pigeon?

A. Yes sir. He moved to Pigeon.

page 211.] Q. You never saw Ruben Thacker yourself, you say?

A. No sir I never saw him.

Q. Of your own knowledge you don't know where he did live?

A. No I only know what other people told me about him.

Q. So far as you know he might have lived at more than one place might he not?

A. I don't know about that that is the only place I was ever shown *whre* he lived.

Q. I understand you to say that you can see the Lick Fork of Thacker Creek from the mouth of the creek as pass along Tug River is that right?

A. I say that any one passing up the river passing by Thacker Creek could see the mouth of the Lick Fork—passing up or down.

Q. The Lick Fork is the north-west fork is it not?

A. Yes sir. It is the first left hand fork going up.

Q. That deer lick would be obscured by grass and brush so

as not to be *visable* to any one passing along the river, would it not?

A. I don't think it could be seen by a man passing along the river close the river.

Q. The deer lick was no uncommon thing in those days was it, *dident* you find them on pretty near *ever* creek?

A. Yes sir they was on almost *ever* creek.

Q. And the lick on Thacker Creek was not essentially different from *othe*4 deer licks I suppose or was it?

A. Well it was used more by the deer being the only lick in that immediate locality and of course the deer in that locality would come to it and it was used a great deal more than any other lick aroud there.

Q. But in *appearence* it was like other deer licks was it?

A. Yes sir all except it was used some more.

page 212.] RE-DIRECT EXAMINATION

By Mr. Campbell.

Q. In one of your answers to a question on *creoss* examination you say that Colonel Floyd moved to Pigeon, what do you mean by that answer?

A. I mean to the Trace Fork of Pigeon.

And further this deponent saith not,

JOSEPH SIMPKINS.

Witness claims 1 day.

LEVI LESTER, being recalled by the contesting defendant after being first duly sworn upon oath testified as follows:

EXAMINED

By Mr. Campbell.

Q. What is the name of the branch coming into the right hand fork of the Race Fork, above where Daniel Justice now lives?

A. Low Gap branch.

Q. Is there any other branch on the right hand side of that creek between the Low Gap Branch and the drain on which Daniel Justice *Lives?*

A. No sir none.

And further this deponent saith not.

his
LEVI x LESTER.
mark.

page 213.] The contesting defendants exhibited to the commissioner Beckley's History of Tazwell County, the title page of which is as follows:—

HISTORY

Of the

SETTLEMENT AND INDIAN WARS

Of

TAZEWELL COUNTY

VIRGINIA;

With

A Map, Statistical Tables and Illustrations
By
Geo. W. L. Bickley, M. D.

Cor. Amer. Ph-Sec.; Cor. Mem. West Acad. Nat. Sciences; Sec. Jeff. Hist. Society.

"Who would not cherish the history of such men
as our ancestors?"

CINCINNATI:

MORGAN & CO., 111 MAIN STREET.

::::::::::

1852.

And from said history introduced in evidence before the com missioner pages 244-245, which are as follows—
244

DEATH OF GILBERT

In the latter part of the summer of 1792*, Maj. Robert Crockett of Wythe County, was informed that a considerable band of Indians had been seen in the settlement on the Clinch, endeavoring to steal horses, but had not at that time succeeded. He immediately raised a company of forty, and went in pursuit of them, thinking it likely that he should fall in with them as they were leaving the settlement with their booty.

He found their trail, over which they had but a short time

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*I say, this circumsance took place in the latter part of the summer, not because I was so informed, but from circumstances equally conclusive. The date furnished me was simply 1792, but it will be seen that the Indians were engaged in catching the young of the otter (Lutra Vulgaris), which do not bring forth their young, till late in summer. (See Goldsmith and American Zoologist).
245

passed, and having no doubt of the route which they would take concluded that it would be an easy matter to come
page 214.] up with them that night. Being short of provisions, he stopped and ordered his men to separate in pairs, and try and kill a few deer. They were to hunt but two hours when the march was to be resumed.

Joseph Gilbert and Samuel Lusk, acting as spies, were ordered to keep on carefully note every sign, and in case they found the Indians to return and give information. These two men were noted spies, and had *ofter* served together. They continued on the trail for about an hour, when they came upon a lick at which the Indians, who were also in need of provisions, lay concealed waiting for the deer or elk which frequented it.

The Indians fired, missing Gilbert but wounding Lusk in the hand. Gilbert turned to run and made off a few yards, when Lusk called to him to return and save him, if possible. The affectionate tone in which this appeal was uttered, fired the manly heart of Gilbert, who turned about and shot the nearest Indian, who fell upon the spot. The Indians closed in upon him as he stood over the body of Lusk, who had fainted from loss of blood, but dropping his gun, he drew his heavy hunting knife and fell to upon the naked bodies of his enemies with such spirit, that the Indians no longer dared to approach within reach of his arm. Keeping out of his reach, they began to hurl their tomahawks at him with such force and accuracy, that he soon lay dead on the earth by the side of his now reviving companion. The wounded hand of Lusk was immediately cared for by the Indians, who after scalping Gilbert, commenced a rapid march for the Ohio. The firing was too far off to give Maj. Crockett any warning of what was going on; but when the two hours had expired, he took up his line of march and followed on after his spies. When they arrived at the
page 215.] lick, they found the body of Gilbert, and pushed on with all possible speed, after burying him near

the bank of the creek which now bears his name, but could not come up with the Indians.

The Indians told Lusk, whom they took prisoner, and who returned in a short time, that if Maj. Crockett had not stopped to hunt, he must have cut them to pieces, as they were, but a few moments before, they came up to the lick en- (page 246) gaged in catching young otters, their arms in the meantime lying on a little knoll several rods from them."

To the introduction of the foregoing selection of said Bickley's History, the defendant King objects and moves that the same be stricken out and not considered as evidence.

Thereupon the contesting defendant *introduced* in evidence the following copies of deeds.—

Deed from John Lawson and wife to John Ferrell, dated September 15th. 1838.

Deed from Zatto Cushing and wife and *and* Anthony Lawson and wife to David Mounts, dated October 28th. 1828.

Deed from Anthony Lawson and wife to John Lawson, dated January 15th. 1838.

Deed from Ann Whorton and Sarah Green to Anthony Lawson dated June 13th. 1833.

Deed from John Lawson and wife to John Ferrell, dated September 15th, 1838.

To the introduction of each of the foregoing deeds in evidence the defendant King *Objects.*

page 216.] Met at Williamson, West Virginia, pursuant to adjournment and by agreement of the parties. September 1st, 1902.

Present: Counsel for the contesting defendants and Judge Stiles attorney for the defendant Henry C. King.

ALLEN J. SHEPPARD, a witness introduced by the con-

testing defendants, after being first duly sworn upon oath testified as follows:

EXAMINED

By Mr. Sheppard.

Q. State your age, occupation and place of residence?

A. Age 67 years, farmer and reside in Mingo County West Virginia, on the Trace Fork of Pigeon Creek.

Q. How long have you resided on the Trace Fork of Pigeon Creek?

A. About 54 years—since March 1848.

Q. Were you acquainted with George R. C. Floyd in his life time? called in the depositions of one Burchfield George Floyd?

Objected to by the defendant King.

A. I don't know about that but I was acquainted with George R. C. Floyd very well.

Q. Have you ever known more than one George or George R. C. Floyd within the territory of Logan County, on any of the waters of Pigeon Creek or of Tug River in that locality?

A. I never know but the one George Floyd; George R. C. Floyd is the only one I ever knew.

Q. When and where did you first become acquainted with him?

A. I first got acquainted with George R. C. Floyd in Virginia—Tazwell County. I can call the time best I was a small boy it was near the time Polk was elected President that I first got acquainted with him, I was very small.

Q. Where did he live after you knew him in Tazwell County?

Objected to by defendant King, to this and all questions and answers relating to the residence of George R. C. Floyd, at any time or the witnesses *acquaintance* with him.

page 217.] A. The next I knew of him was at Warfield Kentucky.

Q. State if you know where he moved to from Warfield Kentucky?

A. To the Trace Fork of Pigeon Creek.

Q. State if you know what year Floyd moved to the Trace Fork of Pigeon Creek?

A. He moved to the Trace Fork on Pigeon Creek in the Spring of 1861.

Q. Had he ever lived on that creek before 1861?

A. Not from 1848 to 1861 he *dident*.

Q. Did you ever know or hear of Floyd living on the Trace Fork of Pigeon Creek at any time before 1848?

A. No sir.

Q. Where did Floyd *moved* to in 1861 on the Trace Fork of Pigeon Creek?

A. He moved on the creek just below were I lived, joining my land on what was known as the Cartwright place.

Q. Did Floyd ever live on Pigeon Creek within your recollection of that stream?

A. No where else only where I tell you—on the Trace Fork.

Q. How far did he live from you?

A. About three fourths of a mile as near as I can get at it.

Q. How far did he live from Pigeon Creek?

A. About 6 miles from the mouth of Trace—from the main Pigeon Creek.

Q. Noah Burchfield has testified that he *he* accompanied Henry Harmon a surveyor of Tazwell County, in the year 1852 in running a line crossing Tug River at the mouth of Steep Cut and crossing Pigeon Creek a little above where the old man George Floyd lived, did you ever know or hear of Henry B. Harmon with Burchfield or with any other person or persons running such line?

Objected to by defendant King.

page 218.] A. No sir I never heard of it before now that I know of.

Q. Is it probable that Harmon with three other men could

have run that line through the neighborhood where you lived at that time and continued the same to a point on the mountain over looking Logan Court House without the fact of his presence in the community running out a big survey becoming public and coming to your knowledge?

Objected to by the defendant King.

A. I think probably I would have heard about it if he had done so. If he did I never heard of it.

Here the defendant King moves to strike the testimony of the witness.

CROSS-EXAMINATION

By Judge Stiles.

Q. How far did you live from the head of the Trace Fork of Pigeon Creek in 1852?

A. About six miles.

Q. A line from the mouth of Steep Gut to Logan Court House would not have passed within ten miles of where you lived at that time would it?

A. I *couldent* say that for I don't know just where a line would run.

Q. Did you keep run of all the surveying that was *dont* in that country, several miles distant from your residence?

A. No sir.

Q. Did you see George R. C. Floyd at any time during the year 1852?

A. Yes sir.

Q. Did you see him move from Warfield when he left there?

A. Yes sir I seen him on the move—I helped him move.

Q. In what year was that?

A. In the Spring of 1861.

Q. How far did you live in 1852 from a point on main Pig-

eon Creek north of Steep Gut, which would probably be three or four miles from the head of the creek—Pigeon Creek?

page 219.]

A. I expect it is ten or twelve miles—I dont know the distance exactly.

Q. Do you remember whether you were along Pigeon Creek in that neighborhood in 1852?

A. I dont suppose I was; I dont remember it if I was.

Q. Did you see Floyd move to Warfield or see him settle there?

A. No I *dident* see him move, I saw him after he was settled there.

Q. Do you know of your own knowledge what year he settled at Warfield?

A. I do not exactly, I think it was in 1849 or 1850.

Q. How old a man was he at that time?

A. He was about 35 between 35 and 40 years as near as I could guess at his age.

And further this deponent saith not.

ALLEN J. SHEPPARD.

Witness claims 1 day and 40 miles.

W. B. MEAD, a witness also for contesting defendants after being first duly sworn upon oath testified as follows:

EXAMINED

By Mr. Sheppard.

Q. State your age, residence and occupation?

A. Age 60 years, residence Marrowbone Creek, Mingo County and am a farmer.

Q. What relation were you to George R. C. Floyd?

A. He was a brother-in-law of mine.

Q. Where did Floyd live in 1852?

Objected to by defendant King.

A. He lived at Warfield, Kentucky.

Q. Where did he move to from there?

A. He moved up on the Trace Fork of Pigeon
page 220.] Creek.

Q. Did you see him move?

A. No sir I *dident.*

Q. Where were you at that time?

A. I was in Virginia visiting.

Q. What, if any public affair was going on at that time?

A. I don't remember—it was about the first of the war or during that time.

Q. What year did you leave home and go to Virginia?

A. I think it was about 1861.

Q. Had Floyd moved to the Trace Fork before you left home?

A. I think not.

Q. Did he ever live on Pigeon Creek?

Objected to by defendant King.

A. If he did I have no knowledge of it.

Defendant King moves to strike out the testimony of the witness.

CROSS EXAMINATION.

By Judge Stiles.

Q. Where did you live in 1852?

A. In Logan County in the lower end of the county on Jenney's Creek.

Q. When did you first know Floyd?

A. About the year 1845.

Q. Where was he living at that time?

A. About Warfield, Kentucky.

Q. How far was that from where you lived?

A. About seven miles.

When did you and he become brothers-in-law?

A. About 1856 or 1857 I dont recollect exactly which.

Q. Were you acquainted upon the upper portion of Pigeon Creek in 1852?

page 221.] A. Yes sir.

Q. Were you there during that year?

A. I was there off and on occasionally once and a while—I passed thro' there once in a while.

Q. Do you mean that you were there off and on in 1852?

A. I passed through there that year about three times that I know of.

Q. How far was that from where you were then living?

A. It was 35 miles I expect.

Q. How do you fix the date as 1852?

A. By the time I was going through there.

Q. What were you doing at that time which took you through that portion of the country?

A. Why I had some relatives out in the back country and I occasionally went through there to see them.

RE-EXAMINATION.

Q. In what business was Colonel Floyd engaged at Warfield?

A. He was running coal and having coal mining and was running the place generally—it belonged to him—he was also making salt.

Q. State whether or not there were any other coal mines operated or salt works in all this section of country at that time?

A. No sir if there was I have no knowledge of them. None closer than King's salt works in Virginia.

Q. State whether or not Colonel Floyd was widely known to the people in this section of the country?

A. Yes sir he was well known by everybody in that section of the country around him.

And further this deponent saith not.

his
W. B. × MEAD.
mark.

Witness claims 1 day and 80 miles.

page 222.] A certified copy of five entries made in the surveyors office of Kanawha County, by William Dingess, dated

28th, of November, 1804, 11th of November, 1806, for certain lands Island Creek, then and now so-called, is here filed by the contesting defendants.

Also the following: Copy of a deed from Peter Dingess, Sr., of Giles County, to William Dingess and Peter Dingess, Jr., of Cabell County, bearing date the 27th day of March, 1809, conveying the Breckenridge survey lying at the mouth of Mill Creek.

Also certified copy of surveys made for *Benjamine* Stewart one for 374 acres on Guyandotte four miles above the mouth of Huffs Creek, made 12th of March, 1791; one of 500 acres on Cane Creek, a branch of Guyandotte about two miles above another survey of 500 acres, made 17th day of March, 1791; one of 500 acres on said Cane Creek, two miles from its mouth made the 18th of March, 1791; and one of 500 acres on Elk Creek, a branch of Guyandotte made the 16th day of March, 1791.

To the filing of each and all of which the defendant King objects and moves that they be excluded from consideration.

The *contestind* defendants also offer to file the deposition of James Perry taken the 15th day of June 1895, of the taking of which the defendant Henry C. King had notice and was represented by H. C. Shumate, his counsel, said Perry now being dead.

To the filing of which deposition or the consideration of the same as evidence, the defendant King objects.

page 223.] JOHN B. WILKINSON, a witness introduced by the contesting defendants, after being first duly sworn upon oath testified as follows:—

EXAMINED
By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age 42 years, residence Logan Court House and am an attorney at law.

Q. How long have you resided in Logan County and when were you admitted to the bar of the county?

A. I have resided in what is now Logan and Mingo Counties all my life and was admitted in 1882.

Q. What official position have you held in Logan County, how many terms and for what periods?

A. I have been Prosecuting Attorney for a number of years, having been elected in 1884, served three terms in succession and am now serving the fourth term. I was also clerk of the Circuit Court in 1883 and Deputy Clerk for some years prior to that.

Q. To what extent prior to the institution of the Henry C. King litigation concerning the Robert Morris grant have you travelled throughout the territory in what was formerly Logan County and to what extent were you *acquainjted* with the citizens, especially the older class in the different sections of the then county?

A. Well I have been over it a number of times and fairly well acquainted with most of the people in the county, and was pretty well acquainted with most of the old people in the county.

Q. During that period did you know anything of a tradition about how *how* Gilbert Creek got its name, if so please state what that tradition was and the extent to which it seemed to be known by the people of Logan County in the different sections, especially by the older class?

A. About all that I can state about that I have
page 224.] heard it spoken of ever since I was a boy as having taken its name from a man by the name of Gilbert who was said to have been killed on that creek many years ago. I have heard different ones of the older people speak of it at different times, some of them on the Sandy River and some on the Guyandotte and that fact seems to have been well understood by most of the people, so far as I have been able to learn in these two counties—I mean Logan and Mingo.

Q. Are the persons whom you heard speak of the tradition now living or dead?

A. I can not recall the names of the different ones I heard speak of it except I remember distainctly of hearing my grandfather speak of it when I was quite a boy and he has been dead for some several years.

CROSS EXAMINATION:

None.

JOHN B. WILKINSON.

ANDREW BAKER, a witness heretofore introduced by the contesting defendants being recalled by said contesting defendants, testified as follows:—

Q. How long have you been acquainted with the Race Fork of Knox Creek, in Buchanan County, Virginia?

A. About 52 years. There has been about 3 years in that time that I *wasent* in that country, that was during the Civil War.

Q. Did you ever know Ison Blankenship and Hezekiah Blankenship, some times called Kiah?

Objected to by defendant King.

A. Yes sir.

Q. Did they or either of them ever live on the Race Fork of Knox Creek, during the time you knew that creek?

A. No sir not to my recollection.

page 225.] The defendant King objects to the foregoing question and answer and all questions and answers relative to where said Blankenship did or did not live.

Q. Did the said Blankenships or either of them ever have a camp or camps on the said Race Fork at or near the forks thereof embracing one-half an *acres* more or less of cleared land and deadening, during the time you have been *acquianted* with that creek?

A. No sir.

The defendant King moves to strike out the foregoing testimony of the witness.

CROSS EXAMINATION.

By Judge Stiles.

Q. Where did you live in 1852?

A. I lived on the Lester Fork of Knox Creek.

Q. How far from the head of the Race Fork?

A. Well sir it is about four or five miles—four miles any way.

Q. Could not a person have been camped on the Race Fork at any time during the year 1852 *withour* knowledge?

A. Well they might have been camped there but they *dident* have no cleared land there if they did.

And further this deponent saith not.

his
ANDREW × BAKER.
mark.

Witness claims 2 days and 74 miles.

page 226.] GEORGE CHARLES, a witness introduced by the contesting *defndnt* after being first duly sworn upon oath testifies as follows:

EXAMINED
By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age I dont know exactly but it is close 60 years, I reside on the Race Fork of Knox Creek in Buchanan County, Virginia, and am a farmer.

Q. How long have you been acquainted with the Race Fork of Knox Creek?

A. About 35 years I think.

Q. Did you ever kuow Isom Blankenship and Hezekiah Blankenship?

A. Yes sir.

Q. Did you ever live at the forks of the Race Fork?

A. Yes sir.

Q. When and how long?

A. I lived there about three years--it is two years back ago.

Q. Had any person ever lived at the forks of the Race Fork?

A. It never had no *appearence* of it but some person may have camped there is all the *appearence* I saw of any person living and staying there.

Q. Was there or had there been any house at or near the fork or had there been any clearing?

A. Not that I could tell.

Q. Who did the first clearing there?

A. Me and my son in law?

Q. When did you do the clearing?

A. Well it has been some seven or eight years ago.

Q. Had that land ever been cleared ever before that time?

A. Not that I could tell.

Q. How much land is cleared there now?

A. I suppose there is some six or seven acres—I just a guessing.

Q. Is it an original forest all around that clearing?

A. Has been until this spring and there has been some cleared this spring.

page 227.] Q. Had there been any deadening of timber, at, above or below the forks?

A. Nothing to amount to anything, there might have been a tree or so.

Defendant King moves to strike out the foregoing testimony of the witness.

CROSS EXAMINATION.

By Judge Stiles.

Q. Where did Isom Blankenship live when you first knew him?

A. He lived up on the head of Knox—on the head of Blackies Fork of Knox Creek.

Q. About when did you first know him?

A. It has been about 25 years ago since I first knew him.

Q. How long ago did you know Kiah Blankenship?

A. About 30 years ago I knew him.

Q. How long have you lived on Race Fork?

A. I think I have been living on that creek about 22 years.

Q. How far from where Daniel Justice lives?

A. About a mile as near as I can *gues* at it.

Q. Are you acquainted with the locality where he lives—the ground that he has cleared about his place?

A. Yes sir tolerable well.

Q. How long have you been acquainted with that?

A. Ever since I have lived there on the creek.

Q. Do you know where there are two poplar stumps back of Dan Justices house about 150 or 175 yards from the mouth of the drain that have recently claimed to be stumps of marked trees claimed by the contesting defendants to be corner trees of the Morris Grant.

page 228.] A. I know where the stumps is that he said was the trees.

Q. Who said that they were the stumps?

A. Daniel Justice.

Q. Have you seen the stumps since the trees were cut down?

A. Yes sir.

Q. Did you ever see the trees when they were standing?

A. Yes sir.

Q. Did you see any marks on them indicating that they were corner trees of a survey?

A. I never paid any attention to any of them, if there was any on them I never paid any attention to them.

Q. How many times did you see the trees while they were standing or either of them?

A. I cant tell you that, I dont know how many times.

Q. Was it a good many times or a few times?

A. Yes sir I saw them a good many times.

Q. How near were you to them at any time, or to either of them?

A. Why I have been close to them, just a passing by.

Q. Did you ever have any particular occasion to go near to those trees repeatedly?

A. I have passed by them a hunting for line trees.

Q. Did you go close up to them, close enough to see if they were marked as line trees or otherwise or not

A. I do not know whether I have or not.

Q. Do you remember having a cow get sick near one of these trees?

A. Ye sir I had a cow that was sick *tolerble* close to them trees.

Q. About how near?

A. I expect 70 or 75 yards as near as I can get at it.

Q. Did you visit her often while sick at that place?

A. I visited her once and twice a day I think for a week or so I guess.

page 229.] In going to her did you pass close by these trees?

A. I would go within some 70 or 75 yards of them, I guess.

Q. About what position did the cow occupy with reference to these trees?

A. She was I suppose she was some 70 or 75 yards from them below right handed as you go up the hollow.

Q. Did you go up the hollow or drain to get where the cow was?

A. Yes sir.

Q. She was further up the drain than the tree was?

A. Rather, yes sir.

Q. About how far from the bottom of the drain was she?

A. She was very close, ten or fifteen steps I reckon maybe less.

Q. What marked lines or other lines or line trees were you looking for at any time when you noticed these trees?

A. We was a running a line of what you call the Stuart survey. I *wasent* looking for these trees we was just a running a line.

Q. You were looking for any marked trees you could find in the neighborhood of where you supposed that line ran were you?

The counsel on the other side has made this witness his own on the question about which he is now enquiring and the question is objected to by contesting defendants because it is leading.

Counsel for the *defensant* King states that he never saw or had any communication with the witness before but will *modigy* the question.

Q. Were you or not looking for any marked trees that might be discovered in the neighborhood of where the Stuart line was supposed to run?

Objected to by contesting defendant as leading.

A. We had found the corner in above there, we *wasent* looking for no corner when we went past the poplars.

Q. Were you looking for line trees?

A. We had been before we found the corner.

Q. I understand you were acquainted with these
[page 230.] trees before that time, is that the fact?

A. I have saw the trees different times.

Q. When were you running this line?

A. It has been some five or six years ago I reckon I *dont* know exactly.

Q. Who was *tith* you if any one?

A. Mr. J. W. Justice, and Rece Davis, and Steve Baldwin and old man Pleasant.

Q. Did you have some difficulty in running the line or in finding the corners?

A. Not a great deal sir.

Q. Did you have to make some search for the corners?

A. Yes sir we hunted some.

Q. Did you ever run or help run or retrace lines of any other surveys in that immediate neighborhood, or look for marked timber?

A. Yes sir.

Q. Of what surveys and what lines?

A. There is a survey between Mr. Watkins and a survey that went by the name of the Lonhart survey.

Q. In the course of this work did you go near to these trees or either of them?

A. Yes sir.

Q. Who was with you at that time?

A. Rece Davis.

Q. Did you at that time find any marked timber of any kind?

A. Yes sir.

Q. What was it and where?

A. It was a cucumber and it stood close 100 yards I suppose the poplars ranging a little up the hollow.

Q. How much time did you spend in *hSuting* for marked trees in that locality, at that time?

A. It was a very short space of time, we might have been there a half of an hour.

page 231.| Q. Was that cucumber on the line you were tracing?

A. No sir it *wasent* on the line where we were expecting or where we were hunting.

Q. About how far was it from that line?

A. I cant tell you exactly as I never saw the line run. I don't know where the line is that we were a hunting for, I never was there when they run it.

Q. About how far was the cucumber from where you expected to find the line?

A. I cant tell you for we *dident* know where the line was I dont know where the line is, we were hunting on one fork and people tell us it was over on the other fork.

Q. Did you have a compass at the time?

A. No sir.

Q. Did you examine a number of other trees in the neighborhood looking for marks while endeavoring to find the line you were looking for?

A. We looked several trees.

Q. On which side of the hollow going up is the cucumber you referred to?

A. On the left hand side as you went up the hollow.

Q. From which direction did you begin the hunt for line

trees and marked trees was it from the mouth of the hollow or the head?

A. I disremember but I think we hunted up the hollow as we went up.

Q. Did you or not examine the *prominant* trees along the line of your search from the mouth of the hollow up to the cucumber and beyond?

Objected to by contesting defendants as leading.

A. We looked several trees but I dont know that

page 232.] we looked them all.

Q. Did you ever run or retrace any lines in that neighborhood or look for marked timber at any time other than the two occasions you have mentioned?

A. Nothing to amount to anything only what I have told you about the two surveys that is all.

Q. What other running or search did you make?

A. I never hunted any in that boundary where we found them lines but I have hunted other places.

Q. Have you done considerable in the way of surveying or in assisting in surveying or in looking for line trees and marked corner trees?

Objected to by contesting defendant as leading.

A. No great deal sir.

Q. Did you find any marked timber—that is line or corner trees at any time in the Dan Justice Hollow except the cucumber and the two corners of the Stuart tract?

A. No sir I only found the corner of the Stuart tract in the hollow it was either two or three lynns I dont remember, and the cucumber, I dont know whether the cucumber was a corner or not.

Q. Was the last search you made before or after the time you helped run the Stuart line and how long before or after

A. Well sir I think it was before we found the Stuart corner.

Q. Do you remember when the poplars that I have spoken of back of Dan Justice's house were cut down?

A. No sir I dont know when they were cut down.

CROSS EXAMINATION

By contesting defendants.

By Mr. Campbell.

Q. How many lines of the Stuart survey did you assist Mr. Baldwin in running on the occasion of going to the lynn corner?

A. I think as well as I recollect there *wasent* but about three.

Q. What particular corner of the Stuart survey were you searching for?

page 233.] A. We *wasent* hunting for no particular corner we were just *runnig* the lines.

Q. Do you remember the gum and dogwood corner?

A. Yes sir.

Q. Did you run from that to the triple lynns?

A. Yes sir.

Q. Were the lynns standing at that time?

A. Yes sir.

Q. Were they above the cliff that projects out on that hill side?

A. No sir I think they were a little left handed as you went up towards the cliff.

Q. In running from the gum and dog-wood corner to the triple lynn corner you would pass the cliff would you not before coming to the triple lynn?

Objected to by defendant King as not cross-examination.

A. We come across the hollow and the lynn stood to the left of us. The cliff stood to the right and the lynns stood I think a little to the left of the cliff as we come across the hollow and turned up the other side.

Q. Where did you run from the triple lynn?

A. We run down the hollow and crossed the creek.

Q. What did you find over there?

A. We found, I believe a birch and a hickory and a white oak I think had fell that the patent called for.

Q. Was the bearing of that line agreeable with the patent call?

A. Yes sir I think it was.

Q. In coming down the hill from the triple lynn corner to the birch, hickory and fallen white oak, was the cliff on your right or left?

A. It was behind us.

Q. Did you pass the two poplar trees you have
page 234.] spoken of to the right or to the left in coming down the hill from the triple lynn?

A. I dont recolect but I rather think they were to the left of us as we come down.

RE-EXAMINATION

By Judge Stiles.

Q. On which fork of Race Fork do you live?

A. I live on the Bear Wallow Fork.

Q. Is that East or West of where Dan Justice lives?

A. I think it is little North west.

And further this deponent saith not.

GEORGE CHARLES.

Witness claims 2 days and 74 miles.

page 235.] MOSES CHARLES, a witness introduced by the contesting defendant after being first duly sworn upon oath testified as follows:

EXAMINED

By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age 62 years, reside on the Race Fork of Knox Creek and am a farmer.

Q. How long have you *know* the Race Fork of Knox Creek?

A. I moved there in 1867 but I have knowed in *in* passing through since 1853 or 4.

Q. How far below the forks of that creek have you lived?

A. It is near a mile and a half from where I live now.

Q. Who now lives at the forks of that creek?

A. Reece Davis stayes there the principal part of the time, his

family I dont think particularly *stayes* there but just comes in *one* in a while.

Q. Who lived there before Reece Davis?

A. Eli Cook, as well as I recollect.

Q. Who cleared the land at that point?

A. I guess Eli Cook made part of the improvement any way.

Q. Did any other person ever live there if so who?

A. George Charles lived there.

Q. Was there any land cleared at that point at, above or below the forks or any deadening of the timber when you first knew that place?

A. Not as I recollect

Q. Was it an original forest there when you first knew it?

A. It might have some camp ground for some people laying out who had cut some timber for fire wood and for building a camp.

Q. Was there any clearing of a half an acre more or less and the deadening of timber around it when you first knew the place?

page 236.] A. No sir only what I supposed to be campers cutting firewood

Q. Was the land at that point cleared of timber and brush?

A. No there was a small growth there and stumps you could see about but there was no clearing for to raise crops as I saw.

Q. Was there a deadening of the timber of a half an acre or more?

A. I *dident* see any timber that had been deadened that I recollect of.

Q. Did you ever know Isom Blankenship and Hezakiah Blankenship?

A. I have knowed them

Q. Did they or either of them ever live or make any improvement at or near the forks of Race Fork?

A. If they did I never knowed it either one of them.

Q. Where did they live when you first knew them?

A. Kiah Blankenship lived on I think what we called the Blackie Fork of Knox Creek?

Q. Where did Isom live.

A. When I *fist* knew him he lived on the Blackie Fork upon the ride like as well as I recollect at this time .

Q. How early in your life did you know them?

A. I was quite young in life when I knowed Hezakiah. I dont recollect of knowing him altogether as long as I had an *acquaintence* with Kiah Blankenship.

Q. Did you know Kiah Blankenship before you first became acquainted with the Race Fork of Knox Creek?

A. A short time before.

Q. Are both of them now dead?

A. Yes sir. I know Kiah is and I hear Isom is dead.

Q. Do you know whether either of these Blankenships ever lived on Panther Creek?

A. I dont recollect of them living over there.

page 237.] Defendant King moves to strike out the testimony of the witness

CROSS-EXAMINATION.

By Judge Stiles.

Q. The two Blankenships lived near each other on Blackies Fork of Knox Creek did they when you first knew them?

A. Kiah was dead when I knew Isom, I became acquainted with Isom after Kiahs death.

Q. They both had lived in Blackies Fork?

A Yes sir.

Q. You were not acquainted with Race Fork in 1852 were you?

A. As well as I recollect 1853 or 4 was as early as I was *acquaid* with the Race Fork.

Q. Did you have occasion visit the upper portion of the creek and about the forks very often during *during* the first few years after 1853 or 4?

A. Yes sir in *sanging*. I was a poor boy and had to toil for my living the best I could.

Q. The land along the creeks bore evidence when you were first *acwuainted* with it that some of the timber or brush had been hacked off as if by people camping there?

A. Yes sir what I thought where *peolple* had camped there and cut timber for fire wood and camping purposes?

Q. How far do you live from where Dan Justice lives?

A. For me to guess at it it is near two miles and a half or three quarters

Q. How long have you lived within that distance of where he lives?

A. I moved there on Race Fork in 1876.

Q. Have you ever been up, or down the drain or hollow where he now lives?

A. I have been up it some two or three times lately—that is within the bounds of the year

page 238.] Q. Had you been up or down that hollow prior to the last year especially prior to the clearing of the timber on the left hand side of the drain going up

A. I passed through there *sanging* and hunting stock divers times.

Q. Did you ever retrace any lines of any surveys or hunt for marked timber in that hollow?

A. No sir I did not before the timber was moved away.

Q. Did you ever notice any marked timber up that hollow?

A. I did not.

Q. Have you been within the last year or so at some poplar stumps on the left hand side of that hollow about 300 feet from the mouth of the hollow and which Messrs. Campbell and *Shepard* and others claim was the stumps of marked poplar trees?

A. I have been at them stumps which they claim to be those corners.

Q. Did you ever see the trees while they were standing?

A. I might have saw them but I never paid any attention to them about looking for corners or anything that way.

Q. How near have you been to the best of your knowledge and recollection?

A. I have no recollection only passing *throught* but have no recollection of how near I was to them I might have walked right up against them but I paid no *atention* to them.

Q. Did you know of any corner trees or any marked trees in that hollow prior to a year or two ago?

A. I saw none.

RE-DIRECT EXAMINATION.

Q. Was there any building of any character at the forks of Race Fork when you first knew that point?

A. No sir.

And further this deponent saith not.

2 days and 74 miles

his
MOSES X CHARLES.
mark

page 239.] HIRAM LANE a witness introduced by contesting *defndants* after being first duly sworn upon oath testified as follows:

EXAMINED
By Mr. Sheppard.

Q. State your age, residence and occupation?

A. Age 60 years next January, live on the Guesses Fork of Knox Creek and am a farmer.

Q. Where were you raised?

A. Well I raised a portion of the time in Buchanan County, Virginia and a part of the time in West Virginia.

Q. What part of your life were you in *Buchanan* County?

A. I stayed in *Buchanan* County until I was near 12 years of age.

Q. At what particular place did you spend that part of your life in *Buchanan* County?

A. On the Race Fork excepting about two years, during which time I lived on Lester fork.

Q. How old *old* were you when you lived on Lester Fork?

A. About 14 years old.

Q. About how many years had you lived on the head of the Race Fork?

A. When we went to the Race Fork I was very small I can just recollect of going there and we stayed there until about the year of 1855.

Q. About how old were you then?

A. I was about 12 years old then?

Q. With whom did you live on the Race Fork of Knox Creek?

A. William Estep.

Q. Was he related to you in any way?

A. He married my mother.

Q. How long had you been acquainted with the Race Fork of Knox Creek?

A. Ever since I can recollect. I have known it and been on it off and on since I left there, I might have missed a year or so at a time.

page 240.]

Q. Up to the time that you left the Race Fork of Knox Creek did Kiah Blankenship and Isom Blankenship, or either of them live *of* the Race Fork?

A. No sir.

Q. Have they ever lived there since that time?

A. No sir they never did.

Q. During the time you lived on the Race Fork was there any cleared land at the forks of Race Fork?

A. No sir.

Q. Where was the first cleared land on the Race Fork of Knox Creek below that occupied by William Estep at that time, if there was any?

A. I believe there was a small cleared field just above McInturf and a half a mile from the mouth

Defendant King moved to strike out the testimony of the witness

CROSS-EXAMINATION.

By Judge Stiles.

Q. You left the Race Fork in 1855 did you?

A. Right about there according to my recollection.

Q. Have you lived there since?

A. No sir.

Q. And about how old were you when you left the Race Fork?

A. I was nearly 12 years I reckon—a little over maybe right about there.

Q. Are you acquainted with the hollow where Dan Justice lives.

A. Yes sir I have been through the hollow *sanging* and probably hunting.

Q. How many times probably?

page 241.] A. I *couldent* fix the times. I have sanged and hunted and cow hunted through there.

Q. During what period did your trips through there cover—how many years and up to about what time?

A. Off and on, it used to be very frequently nearly every winter. The last eight or ten years I *havent* been over much of the Race Fork.

Q. Did you ever camp in the hollow where Dan Justice lives?

A. I dont think I ever did more than to lay out more than a night. It was probably a little below. I camped up there on the head of it several times.

Q. At what point below would you usually camp?

A. I believe in a bottom just below the mouth of the branch.

Q. Was there any regular path or trail leading up that hollow where Dan Justice lives and crossing on to Paw-Paw?

A. No sir I dont think there was.

Q. Do you remember whether you ever noticed any marked timber up that hollow?

A. No sir I never did that I remember.

Q. Did you ever notice any marked timber particularly poplar or beech up the Race Fork some distance above where Dan Justice lives near the Hurricane Fork?

A. This man Estep made a corner just up in the mouth of that fork

Q. Was that poplar or beech?

A. I dont recollect. He made a little survey to run around a little tract of land from there on up the creek. The corner he made was the lower corner and commencing corner.

Q. Do you remember when was the last time you were up the Dan Justice hollow?

. A. It has been a long time since I was on that hollow. Probably 15 years
2 days
84 miles

his
HIRAM X LANE.
mark

page 242.] JOSHUA JUSTICE, a witness introduced by the contesting *defends* after being first duly sworn upon oath testified as follows

EXAMINED
By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age about 63 years, residence mouth of Guesses Fork *Buchanan* County Virginia and am a farmer and merchant.

Q. How long have you known the Race Fork of Knox Creek?

A. About 50 years.

Q. How close have you lived to it during that 50 years.

A. I have lived around there in the country all the time except a little while during the time of the war when I moved off. I think I was gone a couple of years during the time of the *ra*.

Q. Were you ever up and down the Race Fork before you were 12 years old?

A. I might have been but I am not certain of that, but from that I went up and down it very frequently. I lived at the mouth of it four years.

Q. Did you know William Estep during your life, if so where was he living when you knew him?

A. Yes sir I knew him when I lived at the mouth of that creek he was living near the head of the Race Fork when I first knew him

Q. Did you know Jack Breeding, if so how early in life did you know him?

A. I have seen him and heard talk of him a few times but he was at Grundy when I saw him. I never saw him over on Knox Creek.

Q. Did he ever live on the Race Fork of Knox Creek?

A. I never seed or knowed of his living here at all. I was up and down there for fifty years and I never seed or knowed of him being there during my life.

Q. Did you know Isom Blankenship and Hezakiah Blankenship?

A. I *kwen Hezikiah* very well but I have seen Isom a few times but I never saw him on Knox Creek that I know of.

page 243.] Q. How early in your life did you know them.

A. It was about 40 years ago I think.

Q. Did they or either ever live on the Race Fork of Knox

A. I never knowed of it. The only man that lived on it at that time was William Estep.

Q. Was there any cleared land or improvements of any character on the Race Fork at the Forks?

A. I never saw any at all.

Q. Was there any deadening of timber consisting of a half acre or more at that point?

A. I never seed any at all.

Q. Did Isom Blankenship or Kiah Blankenship have any camp at the forks of the Race Fork, any clearing or deadening around either?

A. I never saw any at all sir whatever.

Q. Where did they live during the time you knew them?

A. Kiah Blankenship lived away up on Know—some 6 or 7

miles up on Blackies Fork, *i* dont know just where he did live. I think Isom lived on Bull Creek I am not sure but I think so.

Q. Was the land in and about the forks of Race Fork an original forest until within a few years ago?

A. Yes sir it was at that time and I dont know how long it remained that way, but it was a good while though.

Defendant King moves to strike out the testimnoy of the witness

CROSS-EXAMINATION.

By Judge Stiles.

Q. About when did you first know Jack Breeding?

A. I never did know him only heard talk of him and seen him once. That must have been 40 years ago.

page 244.] Q. You *dident* know either of the Blankenships until about that time did you—about 40 years ago?

A. Yes sir I knowed Hezakiah Blankenship for 50 years or over.

And further this deponent saith not.

JOSHUA JUSTUS.

2 days and 35 miles

HIRAM LAX being recalled testified as follows.

EXAMINED

By Mr. Campbell.

Q. Did you know Jack Breeding?

A. No sir I never knowed him. I heard him talked of.

Q. Did Jack Breeding or any one else ever live at the the old William Estep place at the right fork of the Race Fork of Knox Creek, after William Estep moved away from there about the year 1855?

A. No sir nor no one else.

Q. How frequently were you back to the old William Estep place after you were away from there?

A. The first two years we had moved on the head of Lester Fork about four or five miles from there and we had hogs that

would run away and go back and I visited it several times enough to know that no one lived there in the time of it.

Q. What became of the old dwelling house?

A. It all went to rack.

And further this deponent saith not.

his
HIRAM X LANE.
mark

page 245.] ANDREW JUSTICE, a witness introduced by the contesting *defendat* after being first duly sworn upon oath testified as follows.

EXAMINED
By Mr. Campbell.

State your age, residence and *occupation*

A. Age about 64 or 65 years, occupation farmer and live on the head of Guesses Fork of Knox Creek.

Q. How long have you lived on the waters of Knox Creek?

A. I have been raised there sir. Knox Creek and Panther Creek?

Q. How long have you known the Race Fork of Knox Creek?

A. I have known it ever since I was old enough to recollect the names of water courses.

Q. About how old would that be?

A. I would say from ten to twelve years old.

Q. Did a man by the name of Jack Breeding ever live on the Race Fork of Knox Creek?

A. No sir not to my knowledge.

Q. Were you acquainted with William Estep and with the place on which he lived on the right fork of Race Fork?

A. Yes sir.

Q. Did you know him while he lived *oj* that place?

A. Yes sir.

Q. What became of the old house he lived at?

A. I could not tell you that.

Q. Did any person *accupay* it or live elsewhere on this place after he moved away from there?

A. Not that I know of.

Q. How frequently were you up and down the Race Fork—say after 1855?

A. Well sir I could not tell you that I was up and down it though I could not tell you how many times.

Q. Was there any buildings, clearings, deadenings or any improvements of any character at the forks of the Race Fork at any time prior to the late war?

page 246.] A. There was not any at all at that time.

Q. Did you know Isom Blankenship in his life time, if so how early in your own life did you first know him?

A. Yes sir I knew him. My father moved from Knox Creek to Panther Creek in the year 1852 or 3 a near neighbor to Isom Blankenship about a mile and a half.

Q. How *lond* did you and your father continue to live near Isom Blankenship on Panther Creek?

A. I married and left the old man I think in 1859 if I recollect right. I visited every few weeks my father and my father lived their neighbor to him until after the Rebellion.

Q. Had Isom Blankenship prior to that time and since you first knew him ever lived on the Race Fork of Knox Creek at the forks of Knox Creek or elsewhere?

A. No sir *nor* to my recollection.

Q. How far from the mouth of Panther Creek did Isom Blankenship live on Panther Creek?

A. It is some 14 miles I expect.

Q. Did Isom Blankenship continue to *lige* at the same place from the time your father moved over there to Panther *til* up to the *tim* of the Rebellion?

A. Yes sir.

Q. Did you know Hezakiah Blankenship?

A. Yes sir.

Q. How early in your *lofe* did you first know him.

A. Ever since I was big enough to *kjow* one man from another.

Q. Where did he live from your earliest recollection and from that up to the war?

A. The first recollection that I have of Kiah Blankenship he lived about one mile up on Blackies Fork. He left there *befor* the war *brole* out and went up on main Knox Creek above the mouth of Blackies Fork

page 247.]

Q. Did he ever live at the forks of Race Fork?

A. No sir not since I have been big enough to recollect.

Q. Did he ever live any where on the Race Fork?

A. No sir not since I have been big enough to recollect.

Q. What sort of improvements and how much cleared land did he live on on Blackies Fork?

A. Well there was a right smart improvement—creek farm.

Q. Are Isom and Kiah both dead

A. Yes sir.

Q. Where did Jack Breeding live?

A. He lived on Slate Creek that runs into the Levisa.

Q. How far from the Bill Estep place on the Race *for*?

A. By the road it would have been some eighteen or twenty miles.

Defendant King moves to strike out the testimony of the witness

CROSS-EXAMINATION.

By Judge Stiles.

Q. Have you *travelled* through the drains and hollows leading into the Race Fork?

A. Some of them I have but not all.

Q. Have you ever been through the hollow where Dan Justice now lives?

A. Yes sir I suppose I have.

Q. Have you been there since he has lived there?

A. I have not.

Q. Do you know of certainty where he does live?

A. I do by a recommendation—by hearing, I *havent* been there since he lived there.

page 248.] Q. Where have you heard it stated that he lives?

A. Well I have heard it stated that he lives on the Race Fork at the mouth of a hollow where there should have been some corners, but I dont know the name of the hollow.

Q. When did you hear that stated?

A. It has been frequently the talk for a right smart little spell now.

Q. Do you mean within the few months past?

A. Yes sir.

Q. Do you know where that hollow is situated with reference to some named branch of the creek?

A. I do not sir.

And further this deponent saith not

his
ANDREW X JUSTICE.
mark

2 days and 88 miles.

JAMES R. JUSTICE, a witness introduced by the contesting defendants after being duly sworn upon oath testified as follows.

EXAMINED
By Mr. Campbell.

Q. State *youe* age, residence and occupation?

A. Age 36 years, I live on the Lesters Fork of Knox Creek in Buchannan County and am a farmer.

Q. Do you know where Daniel Justice lives on the right fork of the Race Fork of Knox Creek?

A. Yes sir.

Q. Were you ever at a lynn tree marked as a corner standing near where Justice lives?

A. Yes sir.

Q. When was this and who was with you?

A. It was twelve or thirteen years ago no one was with me I was by myself.

Q. Ho

page 249.] Q§ What sort of a lynn tree was it?

A. As well as I recollect it was a kind of a forked tree that grows up from the ground what they call triple lynn.

Q. Which way did the marks face?

A. As well as I can recollect one faced down to the east like The hollow runs up the right of Race fork and as well as I recollect it was marked on the underside of the tree the side next to the hollow.

Q. In passing down the hill from this lynn toward the Race Fork near Dan Justices house would you pass the cliff to the right or left?

A. We would pass the cliff to the left of the tree as we come down the hill.

Q. Were you ever to those trees after that time you spoke of, and if so when and who was with you?

A. Yes I was *tolerble* close to the tree may be ten or fifteen feet, that has been about six years ago I reckon, I was by myself. *people* followed *sanging* up in there and I was *snaging* and that is how I come to see the tree.

Q. Were you with Samuel Graham at any time when he was resurveying the Coleman or Stuart tract of 3645 acres?

A. Yes sir I was with him when he was running right close around where I lived within half a mile or so, but I was sick and *dident* go with him only when he was running around my land. The land runs right close to my land.

Q. Were the chain carriers who were along with Graham in that survey making surface or horizontal measurement?

A. I am not much acquainted with surveying but I noticed that when they went up the hill they would hold the chain up to get it level.

CROSS-EXAMINATION.

By Judge Stiles.

page 250.] Q. You *dident* notice marks on more than one side—that is the lower side of the lynn you speak of?

A. No sir I dont recollect whether I noticed marks on the upper side of the tree.

Q. You were not with Graham when he was surveying lines at the upper end of that hollow were you?

A. No sir.

Q. You never saw any one run any lines to that lynn did you?

A. No sir I did not.

And further this deponent saith not.

his
JAMES R. X JUSTICE.
mark

2 days and 84 miles.

page 251.] Met pursuant to agreement at Williamson this the 11" day of November 1902.

Present same attorneys as heretofore.

DAVID CARTER a witness introduced by the contesting defendants after being first duly sworn upon oath testified as follows.

EXAMINED

By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age 57 years, I live on the waters of *Guyandott* River on Neds Branch in Mingo County, and am a farmer mostly.

Q. How long have you been acquainted with the mouth of *mouth of* Gilbert Creek?

A. I have been acquainted with the mouth of that creek ever since I was ten years old.

Q. Did that creek formerly enter the river at some other point than where it now enters, if so where and how far from the present point where it *enteres*?

A. Between I will say fifty yards any how, it is that far if not further I never measured it but it is that far.

Q. Do you mean fifty yards above where it now enters the river?

A. Yes the creek is fifty yards below where it used to enter in.

Q. When were you at the mouth of Gilbert Creek last?

A. I was there this morning.

CROSS-EXAMINATION.

By Judge Stiles.

Q. When did the mouth of the creek shift?

A. Well sir to my recollection in 1861 the mouth of the creek made its break.

And further this deponent saith not.

1 day and 94 miles

his

DAVID X CARTER.

mark

page 252.] DANIEL BLANKENSHIP a witness introduced by the contesting defendants, after being first duly sworn upon oath testified as follows.

EXAMINED

By Mr. Campbell.

Q. State your age, residence, and occupation?

A. Age 64 years, I live on the Horse-Pen Fork of Gilbert Creek, and am a farmer.

Q. How long have you been acquainted with the mouth of Gilbert Creek?

A. It has been over thirty years.

Q. Does the creek enter the river now at the same point it did when you first knew it?

A. Oh no it lacks as well as I can tell, I never measured the distance, fully about fifty yards.

Q. Does it enter above or below its former point of entrance?

A. Below now.

Q. When were you at the mouth of Gilbert last?

A. I reckon I was there last Sunday. I am there pretty near *ever* week. I live there right close.

Q. What is there on the ground there that enables you to fix the point where Gilbert Creek formerly entered the river?

A. Why *its* is throwed up—settlings.

Q. Is there any tree or stump of a tree?

A. Not that I recollect of now.

Q. How old were you when you were first at the mouth of Gilbert Creek

A. I expect I *wasent* over ten or twelve years old I have been pretty near raised there.

Q. Do you remember a *sycamore* that now stands where Gilbert Creek formerly entered the river and it stands near the corner of Dave Trents garden?

A. Yes I remember it.

Q. How close did Gilbert Creek run by this sycamore?

A. It run pretty close to it.

CROSS-EXAMINATION

By Judge Stiles.

page 253.] Q. When did you notice a change in the place at which the creek enters the river, or when did that change occur if you know?

A. About 1861 and 1862.

Q. Do you remember more than one sycamore near the mouth of Gilbert Creek?

A. Not as large as that one that is there now.

Q. Do you know Mr. David Carter?

A. Yes sir.

Q. Did you come here with him today?

A. I come part of the way.

And further this deponent saith not.

1 day and 86 miles

his

DANIEL X BLANKENSHIP.

mark

LARKIN SMITH, a witness for the contesting defendants after being first duly sworn upon oath testified as follows.

EXAMINATION

By Mr. Sheppard.

Q. State your age, residence and occupation?

A. I am close up to 80 years of age, I live on the *Horse*)*pen* Fork of Gilbert Creek, [it used to be Horse-Pen clear to the river and Gilbert Fork came in there.] I am a farmer.

Q. How long have you known that creek and especially the mouth of it where it empties into Guyandotte River?

A. I *couldent* exactly state that but I have knowed it since I have knowed myself. My first recollection was there on the creek.

Q. Does that creek empty into Guyandotte River now at the place where it did when you first knew it?

A. No sir.

Q. How has it changed?

A. It changed I expect in 1861 in a big raise, the biggest I recollect of.

Q. Is the mouth of the creek now above or below where it was when you first knew it?

A. Below.

page 254.] Q. About how far below.

A. I think about fifty yards.

Q. Do you know a young sycamore that stands on the bank of the river near the corner of Dave Trents garden?

A. Yes sir it is right there close I think where the creek emptied in.

CROSS-EXAMINATION

By Judge Stiles.

Q. Is that sycamore the only tree about the mouth of Gilbert that you remember anything particularly about?

A. The spring come out there. The sycamore is the only tree at that place that I remember anything about. The creek come in about fifty yards as well as I *recollct* above where it is now going in.

Q. Were you about the mouth of the creek very often in your early day and when you were first acquainted with the place?

A. Yes sir I was there very often, I was well acquainted with the place.

Q. Was the bottom along the creek on the lower side of the creek in timber when you first knew it or was it cleared up?

A. It was partly in timber.

Q. I mean the bottom that is now below the mouth of the creek?

A. I understood you that way but portions of it have washed off.

Q. What portion of the bottom was cleared when you first remember it?

A. Maybe the half or over.

Q. Was it cleared up pretty close to the creek near the mouth?

A. *Tolerble* close.

Q. How much timber was left standing between the creek and the clearing in the bottom?

A. I *cant* state that as I dont know

Q. How old were you when you first remember being down at the mouth of the creek?

A. I expect I was some eight or ten years old.

Q. And you have been there ever since then?

A. Yes sir, every little while.

page 255.] Q. Where did *Gilber* Fork empty into Horse-Pen when you were first acquainted with the creek?

Objectd to by contesting defendants as not cross examination.

A. When I was first acquainted with it it was called Horsepen to the mouth of it at the river but then of late they have got to calling it Gilbert. Gilbert Fork emptied into Horsepen two miles and a half from the river.

And further this *depuent* saith not.

his
LARKIN X SMITH.
mark

1 day and 84 miles.

THOMAS CARTER a witness introduced by the contesting

defendants after being first duly sworn upon oath testified as follows.

EXAMINATION

By Mr. Sheppard.

Q. State your age, residence and occupation.

A. Age 68 years old, I live on Neds Branch on Guyandotte River in Mingo County, about two miles and a half from Gilbert Creek and am a farmer

Q. How long have you been acquainted with the mouth of Gilbert Creek?

A. Ever since I was big enough to recollect, I was raised right there.

Q. Does that creek empty into the river now where it did when you can first remember it?

A. No sir it lacks about fifty yards as near as I can tell from where it did fifty years ago.

Q. Does it empty into the river now above or below where it originally did.

A. It empties in below about fifty yards from where it *fdid* as near is I can guess. There is a sycamore standing now right where the creek was then.

Q. Is that the sycamore at the corner of or near the corner of Dave Trents garden.

A. Yes sir.

CROSS-EXAMINATION

By Judge Stiles.

page 256.] Q. Was that sycamore tree standing there when this creek flowed there?

A. It has been set out there since, that was a big one stood there but it is down and gone, and the sugar tree is *gone* and the walnut is gone that stood there right where the fence is now.

Q. Were they on the upper or lower side of the creek.

A. They were on the upper side and stood right along the bank.

Q. Have you noticed a row of large trees growing along the bank of the *croek* down near to the river along the lower bank of the creek as it now flows?

A. Yes sir., there is a row of *lage* trees standing there now. Where the creek run was filled up in 1861 and is now fenced up in a field—a small lot about a half acre.

Q. I am speaking of a row of large water birches and elms and other trees, extending along the left hand bank of the creek near the *mouh* were they there when you first remember?

A. Oh yes, I remember they were there the creek ran betwixt them and the road.

Q. You were familiar with all the timber around about the mouth of the creek were you not?

A. Oh yes.

Q. I mean from your early recollection on down?

A. Yes sir.

RE-DIRECT EXAMINATION.

Q. How far it is from the river up to that row of water birches strung along the lower bank of the creek?

A. I expect it is fifty yards and maybe more.

Was there any change of the creek up where those birches stand or was it from about that point down to the river?

Objected to by the defendant King as leading.

I dont *recolect* now.

And further this deponeth saith not.

1 day and 88 miles.

his
THOMAS X CARTER.
mark

page 257.] LLOYD HATFIELD, a witness introduced by the *contewting* defendants after being first duly sworn oath testified as follows.

EXAMINED

By Mr. Sheppard.

Q. State your age, residence and occupation?

A. Age 62 years, I live on the Horsepen Fork of Gilbert Creek *Creek,* and am a farmer?

Q. How long have you been acquainted with the mouth of Gilbert Creek?

A. Ever since a boy, when I was very small I was raised right on the creek.

Q. Does that creek empty into the river now where it did when you can first remember it?

A. No sir.

Q. What changes has taken place?

A. Why it nas varied down the river.

Q. About how far below the mouth of the creek as you first knew it does it now empty into the river?

A. I would say from fifty to fifty-five yards.

Q. Where was the mouth of the creek as you first knew it with reference to the *yeong* sycamore near the corner of *Dav* Trents garden?

A. Right about that tree.

CROSS EXAMINATION.

By Judge Stiles.

None.

And further this deponent saith not.

his

FLOYD x HATFIELD.

mark

1 day and 66 miles

page 258.] JACOB LESTER, a witness introduced by the contesting defendants after being first duly sworn upon oath testified as follows.

EXAMINED

By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age 75 years. I live in the lower end of Buchannan County near the mouth of Rock Lick and am a farmer.

Q. How long have you lived in that country?

A. I was bred and born within about five miles of where I am living.

Q. Have you lived there ever since in that neighborhood?

A. Yes sir I never moved out of it.

Q. Did you know Denny Coleman in his life time?

A. Yes sir, he lived right close in the settlement where I lived. he lived about three or four miles up Home Creek. He got killed.

Q. Did you ever assist him in doing some surveying on Race Fork of Knox Creek, if so state who was with you and what you were doing?

A. Yes sir. My father was with me and me and him were carrying the chain and Coleman was the surveyor.

Q. What lands was surveyor Coleman running out?

A. He was runaing lines for John Watkins.

Q. What tract of land?

A. I think it was a survey of six hundred and forty or fifty acres I wont be right certain it was over six hundred.

Q. Who owned the lands Coleman was surveying and from whom did he get them?

A. John Watkins and White—Shade White, they got the land from Uriah Estep.

Q. When was this surveying done?

A. It has been about forty three or maybe five years ago—it was before the war.

Q. Had Denny Coleman entered or surveyed any land for himself in that part of the country at that time?

A. No not as I know of.

page 259.] Q. Did he enter any land in that part of the country to your *knowlege* or information after that time?

A. Well I suppose he did but I *dident* carry the chain on making the new survey I was carrying the chain on open lines.

Q. What do you mean by open lines.

A. Lines made by calls for such and such degrees to a stake.

Q. Did that open line you were ruaning cross the right fork of Race Fork of Knox Creek?

A. Yes sir it crossed the creek and run up a wide hollow and went back intowards Paw-Paw.

Q. On what creek or *barauch* did it go over to on the Paw Paw side?

A. As well as I recollect it went over into the Jim Fork or Abner Fork of Paw Paw

Q. Have you been down the Race Fork from the head of the right fork recently, if so in whose company?

A. I was in Levi Lester's company coming down that creek.

Q. When was that?

A. It has been about three weeks ago.

Q. Did you stop at the house of Dan Justus on the Right hand Fork of the Race Fork?

A. Yes sir.

Q. Where did you go from there?

A. When we left there we went right on down the creek to a little fork that turned up and went up that and went, over to Levi Lester's house.

Q. In running that open line across the right fork of Race Fork did you observe any marked timber?

A. I did.

Q. Where did that marked timber stand?

A. It stood on the left hand side of that hollow I suppose where this man Justus lives.

Q. In coming down the right fork what hollow if any did you pick out as the one in which you had seen that marked timber.

page 260.] A. I thought it was that hollow right where Justus lives, I think we went right up the left hand side of that hollow in running the line.

Q. Was there any cleared land at that time on the right fork out side of the old William Ester place above there?

A. No sir.

Q. About how far up in the hollow from the Race Fork did this marked timber stand?

A. Well sir as far as I have any knowledge of it at this time it must have been one hundred and fifty yards or maybe two hundred yards.

Q. You may state if you know how corner trees are marked?

A. They are marked pretty much on the degree that the lines are run on.

Q. How many hacks on each side?

A. Three.

Q. How was his timber marked that you observed in that hollow while runnning that open line?

A. It was just marked like any other corner that I seen marked, as to what kind of timber it was I recollect that there was one poplar tree and the balance I dont recollect what kind of timber it was.

Q. When you reached this marked timber on that open line what if any thing was said about it at the time.

Objected to by the defendant King.

A. Well sir I just replied to my father and Denny Coleman that this was some mans corner tree.

Q. Tell as well as you recollect in which directions the hacks in this marked timber pointed?

A. One side of the timber was marked looked like it was going to run bias down the creek and then it come right across the creek.

Q. In running the open line do you remember where it started from?

A. No I *couldent* tell you that for we were running so many lines and a heap of them were open lines, I dont recollect where we started on that line at this time.

Q. What was the *appearence* of those hacks as to whether they were old *or* new hacks?

page 261.] A. They were old hacks.

Q. When you came to the corners on that open line in the hollow and when you called attention to your father and surveyor Coleman to them did you mention the name of any as the owner of the corner, and if so how came you to make that remark?

Objected to by the defendant King.

A. Yes sir I did I said "I expect them are Jonathan Hurley's corner trees". I saw the timber standing right on the right of where we were running and I saw these trees were marked as corner trees and I thought they were Jonathan Hurley's corner trees.

Q. Did you have any personal knowledge of where Hurley's corners stood if he had any corners at that time?

A. No sir.

Q. Had Hurley ever told you anything about any land he claimed on Race Fork, if so what?

Objected to by defendant King.

A. Yes sir he told me he owned a good deal of land there, that is the — I called the attention to them corner trees as I allowed them was his. He claimed to me that he owned pretty much all the Race Fork but I found he *hadent* run it all out. He afterwards told me *th t* he run out land there after the war—that is on the Race *ForK*

Q. Is your father or surveyor Coleman yet living.

A. No they are both dead. Coleman was killed in a battle during the war and father has been dead about seven years.

CROSS-EXAMINATION

By Judge Stiles.

Q. When you saw this poplar tree what direction were you running

A. Running right past it sorter going up the hollow right up the mountain.

Q. How near did your line run to it?

A. It was pretty close I *wouldent* say how close it was—it might have been ten feet or it might have been a little more.

page 262.]

Q. Were you on the right or left of the trees?

A. On the left going up the mountain—up the hollow.

Q. I understand that you do not swear that you saw more *that* one marked tree at that time.

A. I seed three trees but I told you I *wouldent* swear what kind of trees two of them was but the other one was a poplar. I saw three corner trees there marked.

Q. What was the last corner from which you ran before you passed those trees?

A. I *couldent* tell you that sir we went across that creek and was running along an open line.

Q. Where was the beginning of that line?

A. I *couldent* answer that question now.

Q. Did Coleman have the calls of the tract he was resurveying?

A. O yes he had the patent for it. It was made as I tell you by calls. It has been so long ago I *cant recollet* what corners. I have been asked by people who own land there if I knew where we begun on that six hundred acre survey and it has been so long I *couldent* tell them, anything about the corners.

Q. Do you know whether you saw any other marked timber while running the survey?

A. I dont know as I did. I have no recollection.

Q. Does the country along Race Fork now have the same appearence at had at that time, or is its *appearence* greatly changed by clearing?

A. It *lokks* like it used to but in this hollow it has been cleared. The forest part of it looks like it used to but this hollow has been cleared since. There was a farm up in the head of that fork at that time.

Q. Were you ever back at those trees after you first saw them at that time?

A. No sir I never was back there. I knowed nothing about the

corners. I knowed there were trees there marked as corners.

page 263.] Q. You do not swear as I understand you that the hollow there by Dan Justus' is the same one through which you ran that line?

A. To the best of my knowledge it is the same hollow. It was a wide open hollow and it looks to me like the one we went up.

Q. Can you state positively that it is the same one?

A. O no I *wouldent* swear point blank to no such a thing To the best of my knowledge that is the hollow but I *wouldent* swear emphatically that that is the one. *I* has been cleared out and has changed the looks of it some. I *wouldent* say emphatically that that is the hollow. I *wouldent* say so before and I *wont* say so yet.

Q. Do you know whether Coleman was running on the degree or course of the patent?

A. No sir I dont know that. He had a patent to run by and I reckon he run by the degree.

Q. How often have you been along Race Fork down the right hand fork since you were there surveying?

A. I have not been there often—once or twice.

Q. What did Levi Lester say to you about corner trees when he got you to go down to Dan Justus' two weeks ago?

A. He said this, he asked me to pick out the place where we run that line through and when we come to that I told him I thought that was the place

Q. What had he said to you about corner trees?

A. He asked me what kind of timber was marked, the three trees and I told him I *couldent* certify to *to* the kind but the one poplar.

Q. He had told you something about some corner trees there at Dan Justus' had he not?

A. Yes sir, he asked me if I knowed what kind of timber it was.

Q. He had *explainf* to you that they were endeavoring to prove some thing about some marked timber at that place *hadent* he?

A. Yes sir and asked me what sort of timber it was.

Q. Did you go up to Dan Justus house?

A. Yes sir we was at his house.

page 264.] Q. Is Levi Lester any relation to you?

A. Yes sir. I am his uncle.

Q. He told you that they were endeavoring to establish a corner of a big survey did he not?

A. Yes sir.

Q. He told you what kind of trees were called for as a corner of the big survey *dident he?*

A. He just asked me if I knowed what kind of a growth it was them corners *wer4* and I told him I just recollected one was a poplar.

Q. He told you what kind of timber was supposed to be the corner of the big survey *dident* he

A. No he *dident* tell me the kind of timber when he asked me about it I told him about the one poplar and I *wouldent* certify what kind the other was.

Q. You never have heard anything more about those trees after you were surveying here until you and Levi talked about them did you?

A. No sir. I heard it talked about some time that there was corners there that there was some dispute over and when they—Levi came to see me I told them what I knew about it.

Q. When did you hear about the dispute about the corners?

A. I think it was some time in the spring.

Q. When you were running the line and saw the marked trees did you go up to them and examine them?

A. I walked right up to them I was right close by them, Denny had stopped there for some time and I discovered them trees being marked and I just replied to my father and Denny that these trees were Jonathans corners.

Q. Did you go up and examine the marks on each tree or could you do that from where you stopped?

A. I dont suppose I was further than from here to the wall of

this room, about ten feet or something near about from the trees, I could see the marks as plain as if they were there now.

Q. Did the trees all stand in a bunch

page 265.] A. Pretty close together they was?

Q. About how many feet apart?

A. Well sir I *couldent* tell you that. I dident take any measurement. They stood right close together, they stood pretty close together, and stood like the making of a V one stood out there, and the other one here and one there (witness indicating—)

Q. How much space did *the* occupy?

A. I *couldent* tell you how close they was together, they was pretty close together. I *dident* take any mea-urements of them and *cane* say

Q. Should you judge they would stand in a space as large as this room?

A. No they were closer together than the size of this room.

Q. About how *man* feet as near as you can judge were they from each other?

A. I *couldent* tell you that. All I can tell you they were standing pretty close together and that is all that I can tell. I *wasent* measuring the feet I *wasent* expecting this.

Q. Were they as near to each other as you were to them?

A. Oh yes they was nearer that I was to the timber, that is my recollection.

And further this deponent saith not.

3 days and 110 miles.

his
JACOB X LESTER
mark

page 266.] Resumed taking depositions at Williamson, West Virginia, pursuant to agreement between the parties, this the 10th. day of November 1902

Present: Edward C. Lyon and Campbell, Holt & Duncan and Sheppard & Goodykoontz, attorneys for the contesting defendants.

Judge M. F. Stiles, attorney for the defendant H. C. King.

ALFRED WOLFORD, a witness introduced by the contesting defendants after being first duly sworn upon oath testified as follows:—

EXAMINED
By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age 54 years, I reside on Knox Creek, Buchannan County Virginia and am a farmer.

Q. On what part of Knox Creek do you live and how long have you lived there?

A. On Blackies Fork and have lived there 24 years.

Q. State what official position you have filled in Buchannan County Virginia and for what length of time?

A. I have been constable four terms and deputy *Sheriff* about one year.

Q. In what district, and did that district embrace the Knox Creek country?

A. In Rocklick District which embraced the Knox Creek country.

Q. Are you acquainted with Reece Davis, Daniel Justus, John Justus, son of Wiley Justus, Adam Justus, son of Simeon, John J. Justus, son of Joab, and Andy Justus, Sinett Justus, Morgan Justus, and Lafayette Justus, the last being four brothers of Daniel Justus?

A. Yes sir I am acquainted with the men you named over.

Q. How long have you known them?

A. I have known them from little boys up.

Q. Are you acquainted with the gengral reputation for truth and veracity of each of them in the neighborhoods where they respectively live?

A. Yes sir.

page 267.] Q. Is that reputation of each of them good or bad?

A. It is bad.

Q. From that reputation are they or either of them worthy *or* belief or credit on oath?

A. No sir.

CROSS-EXAMINED
By Judge Stiles.

Q. Did you ever know, that is did you ever hear, any one of those persons testify in any court or in any case other than the present one?

A. Yes sir.

Q. Which ones of them?

A. I have heard Reece Davis give evidence, I have heard Daniel Justus, I have heard Sinett, Justus and Morgan Justus and John Justus, give evidence I dont recollect whether I heard Adam Justus give evidence or not.

Q. Did you ever hear any one in your neighborhood say anything about the *truthfullness* of the persons you have mentioned, prior to their testifying in this case?

A. Yes sir.

Q. When was it?

A. Some of them it has been for the last ten years and from that on down.

Q. Who did you hear discussing their veracity?

A. I have heard Daniel Blankenship, *Newis* Blankenship, John C. McCoy Hiram Hall. I dont recollect of any more right at present.

Q. Hall, McCoy and the Blankenships had had some litigation with the people you have mention, *havent* they?

A. I dont think that Hall or McCoy did; Blankenships and them had some trouble I think.

Q. Sennet Justus is a constable in the same *District* as yourself is he not?

A. He lives in the same *District* I do. I dont know whether

he is a constable or not he was appointed by the court but was never elected by the people.

page 268.] Q. Was any attempt ever made to your knowledge in Buchannan County to impeach the veracity of the witness you have referred to

A. I dont know, if there was I have no recollection of it.

Q. How far do you live from the mouth of Blackies Fork?

A. One mile.

Q. You are or have been a defendant in some of the King suits in the United States Court have you not, effecting the land in Buchannan County?

A. No sir I never have.

Q. Have you ever had any difficulty your self or disagreement with the persons you have been called upon to impeach

A. No sir we have always got along the best kind, never had any trouble

RE-DIRECT EXAMINATION.

Q. Did you ever arrest any of the witnesses named, if so which ones and what was the charge against them?

A. Yes, I arrested John Justus, I think as well as I recollect, it has been several years ago, it was for house breaking..

RE-CROSS EXAMINATION.

Q. What was done with John Justus when you arrested him?

A. I brought him to the squire and turned him over to the squire and the squire flew a little mad and *wouldent* try him and I turned him loose. Some time after that the party that he broke in the house of indicted him and they wooled along with it a right smart little bit and I dont know what they did do with it.

Q. You never heard of his being convicted or sent to the penitentiary for house breaking, did you?

A. No sir.

Q. Are you in the employ of the Ritter Lumber Company

A. I work sometimes for them, I dont work regular.

Q. That company is claiming pretty much all of the timber on Knox Creek on the land claimed by King is it not?

A. I think so.

page 269.] Q. Doing all that it can against Mr. King in this case *isent* it?

A. I cant tell you, I dont know.

And further this deponent saith not.

1 day and 82 miles.

his
ALFERD X WALFORD.
mark

A. C. STACEY, a witness introduced by the contesting defendants after being first duly sworn upon oath testified as follows.

Q. State your age residence and occupation?

A. Age 28 years, I reside at Blackie Virginia, in Buchannan County, my business is farming and merchandising?

Q. How long have you lived at Blackie and on the waters of Knox Creek

A. I have lived there ever since I was born

Q. Are you acquainted with Reece Davis, Daniel Justus, John Justus, son of Wiley Justus, Adam Justus, son of Simeon, John J. Justus, son of Joab, and Andy Justus, Sinnett Justus, Morgan Justus and Lafayette Justus, the last *our* being brothers of Daniel Justus?

A. Yes sir.

Q. How long have you knewn them?

A. I have known them ever since we were boys and raised up together, some are older than I am.

Q. Are you acquainted with the general reputation for truth and veracity of each of them, in the neighborhoods where they respectively live or have lived?

A. Generally yes sir.

Q. Is that reputation of each of them good or bad?

A. Most of them bad sir.

Q. Which ones are bad?

A. Sinnett Justus, Lafayette Justus and the rest are all bad except I never heard anything against John J. Justus.

Q. From the reputation of each except John J. Justus, are they worthy of belief on oath.

A. No sir according to the reputation.

page 270.] CROSS-EXAMINED

By Judge Stiles.

Q. You dont mean to say that none of these men could be believed on *on* his solemn oath, especially in a case in which he was not a party?

A. I dont say that the men would swear false but according to the general reputation I *couldent* believe them.

Q. Would you not from your own acquaintance with them or some of them believe them under oath?

A. Some of them I could not.

Q. And some of them you could?

A. I excepted John J. Justus before

Q. When have you heard the veracity of these men discussed?

A. I *couldent* designate any certain time but I heard it very often through our neighborhood of people.

Q. That has been recently *hasent* it?

A. Well yes, I heard it very common, I dont when but I heard it talked.

Q. Whom did you hear talk it?

A. Well sir to designate any certain person at present I cannot.

Q. Is it not a fact that Reece Davis for instance, has stood very well in your community—been well thought of?

A. It used to be it seemed like that he was but here of late he is not

Q. That is the good deal of the way with some of the others is it not?

A. No sir, most of the other ones have had a bad name ever since they were boys.

Q. That bad name was simply that they were bad boys, *wasent* it?

A. It was simply because they was stealing, fighting and such as that and impeached of lie swearing, I have heard that on the most of them.

Q. Most of the people over on Knox Creek have bad reputation with the other people, have they not?

Objected to by the contesting defendants.

A. Well no there is lots of good people on Knox Creek, I think sir, some of them is bad, of course.

page 271.] Q. *Isent* it very common over in Buchannan County, when people get into law suits with each other, for them to start in and try to impeach each other or impeach each others witnesses?

Objected to by contesting defendants.

A. I have heard such things talked of but I dont know that I ever was present and heard any one impeached.

And further this deponent saith not.

A. C. STACEY.

1 day and 80 miles.

HARLAN SMITH, a witness introduced by the contesting defendants after being first duly sworn upon oath testified as follows.

Q. State your age, residence and occupation?

A. Age about 47 years, I live on Lesters Fork in Buchannan County Virginia and I farm mostly

Q. How long have you lived on Lesters Fork or in that neighborhood?

A. Ever since I was born.

Q. Are you acquainted with Reece Davis, Daniel Justus, John Justus, son of Wiley, Adam Justus, son of Simeon, John J. Justus son of Joab and Andy Justus, Morgan Justus, Sinnett Justus and Lefayette Justus all brothers of Daniel?

A. Yes I know them *tolerbly* well.

Q. How long have you known the persons named?

A. I have known them ever since part of them was kids big enough to go about. I have known the balance ever since they was big enough to know anything about them.

Q. Are you acquainted with the general reputation, for truth

and veracity of each of said persons, in the neighborhoods where they live or have lived?

A. I am not acquainted with the reputation of all of them but from what the people give them it is bad.

Q. Have you heard the reputation of these people for truth and veracity of these people talked about in their neighborhoods?

page 272.

Q. Yes sir it is talked about a good deal in their neighborhoods.

A. How long has this talk been going on?

A. As well as I recollect I have heard it talked as to part of them eight or ten years.

Q. Have you heard the reputation, for truth and veracity, of all of *theese* persons talked about?

A. Yes there is a good deal of talk about them all through the country.

Q. How long has such talk been carried on?

A. I dont exactly recollect but I have heard it talked around through the country a right smart little bit.

Q. From such general reputation are said persons or either of them worthy of belief on oath?

A. I dont think they would be.

CROSS EXAMINATION

By Judge Stiles.

Q. Your very deaf are you not?

A. Yes, I am pretty hard of hearing—been a good bit that way.

Q. How long have you been afflicted that way?

A. It has been some ten or fifteen years, I had a fever that caused me to get that way.

Q. What have you heard people say about Daniel Justus?

A. Why I heard a man by the name of Dan Blankenship say one time that he could take another man like him and prove anything he wanted to.

Q. When did you hear that?

A. I dont recollect how long ago it has been but it has been some several years.

Q. Had Justus been a witness for Daniel Blankenship?

A. I dont know whether he had been a witness for him or against him or what.

Q. You live a considerable distance from the Justus boys do you not?

A. I dont live right *colst* to them I dont know exactly where they do live, they live up on the little creeks.

[page 273.] Q. You have heard these people discussed a good deal right lately, have you not?

A. Yes sir, not very long *go*. I dont know exactly how long it has been.

Q. This all occurred on Knox Creek on the land that Mr. King claims and among the people with whom he is having law suits, does it not?

Yes and some of *of* it that I heard talk—as on it.

Q. Who got you to come here to testify against the truthfulness of your neighbors?

A. Levi Lester—he got me to come.

Q. Did you ever hear any body talk about Levi's veracity?

A. I wont say for certain—I cant recollect everything.

Q. Well you recollect hearing it said that it was pretty bad?

A. I have heard the fellows say that Levi was in a little fuss but I pay much attention to that as the fellows that was talking it might have *have* been as bad as he was.

Q. He was gathering up these witnesses to come out here to testify against his neighbors, was he?

A. Levi *wasent* gathering them up without it was these here Justus fellows, he said to me that he wanted me to come down here as a witness. He *dident* say anything about gathering up witnesses to testify against his neighbors.

Q. How long have you known Reece Davis?

A. I have known him over 25 years.

Q. Has he not always stood well as an honest man in your neighborhood?

A. I always thought Reece was a very honest man.

Q. You dont believe that he would perjure himself—that he would testify falsely under oath?

A. It dont look like he would, he is of a very good family. He has brothers that is of as good standing as any man in the county.

Q. He himself is of as good standing as any man in the county, is he not.

A. I guess that Reece is in *tolerble* fair standing—he is as far as I know.

[page 274.] Q. Did you ever hear any one say that they would not believe Reece Davis under oath, prior to the taking of testimony in this case?

A. I dont know as ever I did, if I did I dont recollect it.

Q. You would not hesitate to take his word yourself would you?

A. I would take Reeces word, I think, unless he has done something that I *havent* heard I *couldent* put his oath away.

And further this deponent saith not.

HARLAN SMITH.

1 day and 80 miles.

JAMES R. JUSTUS, *wa* witness for the contesting defendants after being first duly sworn upon oath testified as follows.

EXAMINATION

By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age about 52 years, I live on the Lester fork of Knox Creek and am a farmer.

Q. How long have you lived on the waters of Knox Creek.

A. I reckon about 35 years.

Q. Are you acquainted with Reece Davis, Daniel Justus, John Justus, son of Wiley, Adam, son of Simeon, John J. *Jostus*, son of Joab, Andy Justus, Senett Justus, Morgan Justus and Lafayette Justus, if so how long have you known them?

A. Yes sir I have known them ever since they have been in the land I reckon.

Q. Are you acquainted with their general reputation for truth and veracity, in their neighborhoods?

A. Yes sir I reckon I am, it is pretty bad.

Q. From that reputation are they or either of them worthy of belief on oath?

A. Well just from the country talk I hardly believe they could be.

page 275.] CROSS-EXAMINATION

By Judge Stiles.

Q. Then if Dan Justus should tell you that he saw a marked corner tree on Race Fork you *wouldent* believe it would you?

A. No sir I *wouldent*.

Q. Do you know whether he has any reputation, good or bad, for veracity over on Paw-Paw Creek, and on Race Fork?

A. I cant tell you he never was believed in telling the truth for good or bad. He was what we always called a "blow".

Q. Did you ever hear him testify in court?

A. No sir I dont think I ever did.

Q. By "blow" you mean a blow-hard or an interesting or persistent talker I suppose?

A. Why we just mean a blow and little in him no way and never pay much attention to him no way.

Q. Do you think that is the way he has been regarded on Race Fork and Paw-Paw and in that vicinity?

A. I dont know what Paw-Paw calls him, I know what we call him among us and we are pretty close by him.

Q. Prior to the excitement about this case, did you ever hear any responsible man actually say he *wouldent* believe him upon his oath in a court of justice?

A. I dont think I ever did.

Q. You know Reece Davis?

A. Yes sir.

Q. *Isent* he and *hasent* he always been regarded among your people as an honest man?

A. No sir, he is counted a dead beat among us—there is little in him no way.

Q. Now in what respect?

A. He is an old fellow larking from place to place and there is little thought of him no way, and little attention page 2?6.] paid to him.

Q. What do you mean by larking from place to place?

A. Well sir he is just a larking around from one woman to another and dont pay no attention to his family but little.

Q. Prior to the taking of testimony in this case you never heard him spoken of as being unworthy of belief did you—that you *couldent* believe his word or his oath?

A. Yes I heard it spoken through the settlement there that they *couldtnt* believe him no way.

Q. Whom did you hear say that?

A. I have heard several of them say it about there. I heard a brother of mine, he is now dead and another one who is living now and several of them say they *couldent* believe him no way, it is the talk among them all they dont believe him no way.

Q. When did your brother make that *remark* and how did he happen to do so?

A. Why it is talked nothing else that he is no more thought of than an old dog, that is all of that—that is around me down there. Down around me when the people see old Reece coming they say I would just as soon see an old dog come into my house.

Q. Reece is rather fond of the women *it* he not?

A. Yes, that is right—that is what I mean. Reece is a great man with the women.

Q. You have heard more of that talk quite lately than you did five or ten years ago I suppose?

A. Well I have heard it a right smart little while but to tell you how long I *cant*?

Q. Your brother had some difficulty of some sort with Reece *dident* he?

A. Not as I know of.

Q. Mr. Campbell asked you about eight or ten of these *pesons* in a lump, have you heard the reputation of all of that family, as a family, discussed?

Question by the witness: Do you mean Daniels page 277.] family.

Answer by attorney I mean the list that was read to you.

A. Why yes the people dont give them no good namés. *Thay* are *now* well spoke of at all.

Q. Did you ever hear anything said particularly about, for instance, Layfayette Justus, have you ever heard him individually and separately discussed as to his truthfulness?

A. Why there are pretty bad reports as to him.

Q. Did you ever hear anybody say anything about his truthfulness, until within a year?

A. Well I dont know that I did but he has been mighty little thought of

Q. How far from the mouth of Lesters Fork do you live??

A. About two miles up Lesters Fork

Q. You have considerable land over there in controversy with Mr. King have you nót?

A. Yes sir.

Q. Did Levi Lester get you to come over here.

A. I reckon he did.

Q. He told you what was wanted of you I suppose?

A. Yes I believe he did.

And further this deponent saith not.

his
JAMES R. X JUSTUS.
mark

1 day and 76 miles.

page 278.] HIRAM HALL, a witness introduced by the contesting defendants after being first duly sworn upon oath testified as follows.

EXAMINED
by Mr. Campbell

Q. State your age, residence and occupation?

A. I am in my 59th. year, I reside on Knox Creek near the mouth of Lester Fork and have formerly been a farmer.

A. How long have you lived on Knox Creek in the neighborhood of the Lester Fork?

A. About fifty years

Q. Have you ever been sued by Henry C. King over the land you claim on Knox Creek?

A. I was sued as the administrator of Martin Blankenships estate, when I was Sheriff of the County of Buchannan.

Q. When and how long were you Sheriff of Buchannan County?

A. I was Sheriff 4 years beginning 1891, when I was elected; I was Deputy Sheriff two years before that.

Q. Did you collect taxes and execute the duties of your office on the waters of Knox Creek?

A. No sir I never collected no taxes, I *execut4d* the duties of my office on Knox Creek

Q. Are you acquainted with Reece Davis, Daniel Justus, John Justus, son of Wiley, Andy Justus Brother of Daniel, Adam Justus son of Simeon, John J. Justus son of Joab, Sinnett Justus, Morgan Justus and Layfayette, brothers of Daniel, if so how long have you known them?

A. Yes sir I am well acquainted with them, I have knowa them ever since they were born I reckon.

Q. Are you acquainted with the general reputation, for truthfulness of each of said persons, in their respective neighborhoods?

A. Some of the parties I am and some of them I have never heard anything against them.

page 279.] Q. Give the names of those you have not heard anything against?

A. Andy Justus and Reece Davis I have never heard anything against.

Q. Is the general reputations for truthfulness of Daniel Justus, John Justus, son of Wiley, Adam Justus, son of Simeon, John J. Justus, son of Joab, and Sinnett Justus, Morgan Justus and Fafayette Justus, good or bad

A. I never heard Dan's Brother Morgan Justus, reputation said much about in the country The rest are bad.

Q. From their bad reputations are they entitled to belief on oath?

A. Well from what I hear the neighbors speak about them—the general report of the people I *couldent* give them credit on oath.

CROSS EXAMINATION.

By Judge Stiles.

A. You say you never heard any one question the truthfulness of Morgan and Andrew Justus?

A. No sir I never did.

Q. You have known them from childhood?

A. Yes sir I have.

Q. How far have you lived from them, during their life time?

A. I *couldent* tell you exactly we all live there right in the same neighborhood? Within two or three miles of each other .

Q. You have never heard anything against the veracity of Reece Davis have you?

A. Yes sir. It is the neighborhood and country talk around there that Reece is an uncertain fellow that he *couldent* be relied on.

Q. By that do they mean that he was too fond of the ladies?

A. Yes that is the talk that he is a woman man and besides that it is the talk that he is a man that aint to be confidenced no way.

page 280.] Q. You have known him well for many years have not?

A. Yes sir we was raised right together.

Q. Would hesitate to take his word on oath on ordinary matters?

A. Well I have heard two of his uncles and one of his brothers speak hard of him.

Q. I mean from your own personal knowledge and *acquaintence* with him?

A. Well sir from my own personal knowledge and *acquaintence* with the man as far as me and him is concerned I could take it. From the general report of the country—that is the neighbors his reputation is awful bad but so far as me and him is concerned it is all right.

Q. You heard a good deal about him among the people in the last three or four months have you not?

A. Why no sir I aint heard so much said about *his* for the last few months.

Q. *Hasent* there been a good deal said and a good deal of feeling against him and all of the other witnesses from Knox Creek who testified in behalf of Mr. King in this case, within the last few months?

A. No sir I *havent* heard anything for the last three months against Reece Davis in particular?

Q. But you heard a good deal shortly before that against him and the others?

A. Yes sir I heard a right smart talk against him and others ones before that?

Q. That was on account of this case was it not?

A. Yes sir concerning the case I have heard a right smart talk about it, concerning the witnesses.

Q. The general feeling over on Knox Creek is pretty strong against any person from there who came out to testify in this case in behalf of Mr. King is it not?

A. Of course it is.

Q. Reece Davis gets most of his bad name among his neighbors because of having testified in this case *doesent* he?

A. No sir from the general recommendation that
page 281.] I get from his Uncles and people over there who have had dealings with him it is before that.

Q. One of the people over there—Adam Justus had a fight

with and beat up Reece Davis on account of this case did he not?

A. I dont know sir I heard they had a fight but I *wasent* present and dont know what it was about.

Q. The people on Knox Creek have a pretty mean opinion generally of a man from that country who will come out here to testify for Mr. King, do they not?

A. Yes sir as far as I know.

Q. And on the other hand they think a man is doing a patriotic duty when he comes out here to testify against Mr. King do they not?

A. Yes I suppose they think they are in the discharge of their duty to come out here and swear for their own interest and the interest of their country

Q. I suppose the people over there would regard anybody as truthful and his reputation as good who should come out here to testify against Mr. King—I dont mean you personally but the people?

A. There might be lots of people come here and testify in favor of Mr. King who are truthful, I dont know anything about that.

Q. You think from the reputation of Daniel Justus that one would not be warranted in believing his statements?

A. From the general reputation he bears in my neighborhood it is bad and one would not be warranted in believing his statement.

Q. Is that reputation very well known in his neighborhood and among the people who are acquainted with him, I speak of Daniel Justus.

A. Yes sir, very well known.

Q. If he should tell a yarn about finding marked corner trees on Race Fork as a corner of a survey that had not been recognized as a corner of any survey, you think from his reputation one ought not to believe it do you?

A. That is the general report of the neighborhoods that they

wouldent believe it. John W. Blankenship said that he swore a lie in a suit with Wilders in a suit against Blanken-
page 282.] ship, for a suit of *cloths*.

Q. Dont you know that Daniel Justus never testified in any suit in which Colonel or Mr. King was interested? except this one?

A. No sir I dont know it.

Q. Do you know that he ever did?

A. No sir I dont except just what Blankenship told me

Q. Are you acquainted up where Dan Justus now lives?

A. Yes sir.

Q. Did you ever see any marked poplars and sugar tree up in that drain back of his house?

A. No sir not as I remember of. I might have seen them but dont recollect.

Q. How long have you been acquainted with that locality?

A. I guess some forty-five years.

Q. You have been up through that hollow often have you?

A. I have been up and down the Race Fork very often. I never paid no attention I have *surged* and hunted and hauled saw logs through there and might have seen them and not remembered it.

Q. Have you been up and down the hollow at the mouth of which Dan Justus now lives?

A. Yes sir I have been up and down that hollow.

Q. A good many times?

A. I *couldent* state how many times.

Q. If you ever saw any marked timber up there you have forgotten it?

A. I never paid any attention and *wasent* expecting anything of the kind and might have seen them and might not have seen them, if I seen them I have no recollection of it.

Q. Did you ever hear anything about them?

A. I never heard anything about them until this question was sprung I mean the question sprung about them corners being there.

Q. Do you know where the Estep corner is a marked poplar near Race Fork some distance above Dan Justus's?

A. I dont know anything about any of the corners of any of the surveys. I have heard of the four white oaks on Knox Creek.

And further this deponent saith not.

page 283.] HIRAM HALL.

1 day and 76 miles.

Continued the taking of depositions for the contesting defendants this the 11th day of November 1902, at Williamson, W. Va., pursuant to adjournment on yesterday.

Present: The same attorneys as on yesterday

H. M. COLEMAN, a witness introduced by the contesting defendants after being first duly sworn upon oath testified as follows.

EXAMINED

By Mr. Campbell.

Q. State your age, residence and occupation

A. Age 24 years, residence Hurley Virginia, I am Commonwealths Attorney for Buchannan County, and also a merchant.

Q. On what creek and near what forks thereof do you live?

A. I live on Knox Creek at the mouth of the Lester's Fork.

Q. How long have you lived there and in that neighborhood?

A. I have been there—permanently at Hurley ever since August 1901; I was born and partly raised on Race Fork about one mile and three quarters below Lesters Fork. I have been acquainted with the country all my life.

Q. How long have you been Commonwealths Attorney for Buchannan County Virginia?

A. I have been acting as such attorney for about thirteen months.

Q. Are you acquainted with Daniel Justus, Andy Justus, Seanett Justus, Morgan Justus, Lafayette Justus, John J. Justus,

son of Joab, Adam Justus son of Simeon, John Justus son of Wiley and Reece Davis, if so how long have you known them?

A. Yes sir I am acquainted with them. I have known part of them all my life, I used to play with the Justus boys when I was a kid. I became acquainted with Andy Justus, Adam Justus and John Justus later in life.

page 284.] Q. Are you acquainted with the general reputations for *truthfullness* of each of said last named persons in their respective neighborhoods?

A. Yes sir.

Q. Is that reputation good or bad?

A. With the exception of Morgan Justus, I *couldent* say very much as to his reputation,—nothing more than what I have heard the last month or so, as to the other parties I consider their reputation bad.

Q. From that bad reputation of the persons named, excepting Morgan Justus *Is* either of them worthy of being on oath?

A. I *wouldent* consider that they are.

CROSS EXAMINATION

By Judge Stiles.

Q. The most you have heard about the veracity of the persons named has been since they testified or were expected to testify in this case has it not?

A. A part of it has developed since this case but as a whole their reputations have been bad all the time.

Q. Until within a month you never had heard any one question the veracity of Morgan Justus?

A. I dont remember it.

Q. He is in fact a well disposed and reputable man is he not?

A. I might say that in some instances he is. I have known him to have a lot of trouble but as to his truth and veracity I never heard anything said against it until a month or so ago.

Q. You have known him as long as *long as* you have any of the others?

A. No sir I have not. I have known Daniel Justus, Seanett

Justus and Reece Davis longer than any of the rest and been more acquainted with them. I have a remembrance of knowing Morgan Justus for about six or seven years, or longer.

Q. When a man from Knox Creek testifies for Mr. King his neighbors immediately furnish him with a bad reputation do they not?

pag. 285.] A. As a rule they have a bad reputation before they become a witness.

Q. Do you know Steve Baldwin and W. W. Baldwin?

A. I do.

Q. Do they come within that rule?

A. As to W. W. Baldwin I dont know very much about him but as to Steve Baldwin he does.

Q. He is the jailor of your county is he not?

A. He is the present time.

Q. And W. W. Baldwin is County Surveyor?

A. Yes sir, that is my understanding

Q. When a man from Buchannan County, testifies in this case in the interest of Mr. King, his character and reputation is immediately over hauled by his neighbors, is it not?

A. It is generally known before he testifies

Q. I will not repeat the question. When a man from Buchannan County testifies in this case in the interest of Mr. King, his neighbors immediately overhaul his character and reputation do they not?

A. As I answered the question before the people of course talk more about the reputation than they do before he testified, as their reputations are already bad before testifying for said King.

Q. If one of *thsose* witnesses had a good reputation before testifying it would be lost by that act would it not? so far as your Knox Creek people are concerned?

A. I *couldent* say as I dont know of any one having a good reputation testifying for the said King excepting Morgan Justus and I *couldent* say that his character is perfect, excepting that I

never heard anything to his truth and veracity unfil here of late.

Q. Do you know A. J. Stacey?

A. Yes sir.

Q. He is just as bad as the rest is he?

A. He is just a new one that is just brought in there and I dont know much about his truth and veracity.

[page 286.] Q. I meant L. G. Stacey?

A. Yes sir I know him

Q. Is he just as bad as the rest of the witnesses?

A. From my personal knowledge he is worse, I know it to be.

Q. How about the Charles. Mont Charles and George Charles?

A. I am not acquainted with those parties enough to say.

Q. Are you pretty well acquainted with the characters and reputations of all the people over in that country?

A. A great many of them I am.

Q. Do you know Mr. Alfred Wolford who testified here yesterday?

A. I do.

Q. Do you know anything about his having been arrested upon any criminal charge?

A. Not to my personal knowledge I dont.

Q. Do you know about his *reputtation*—his accepted character as a man in your county?

A. I know that he stands well in this side of the county, I know that he has been a very hard man to beat there for constable.

Q. You have known by reputation of his being arrested and tried on a criminal charge?

A. It bears in my mind that I have heard of it?

Q. Do you know what it was?

A. No sir I do not, but it *hasent* been for anything of late.

Q. You have taken quite an active interest in this case and in the collection or suppression of evidence for one party or the other have you not?

A. I *couldent* say that I have.

Q. You cant say that you *havent*

A. I can say that I have not.

Q. You are or have been interested in some lands that is in controversy with Mr. King, have you not?

page 287.] A. I was interested in some timber but have disposed of it sometime since.

Q. How long ago?

A. I couldent say the exact date—I suppose it has been some two or three months ago.

RE DIRECT EXAMINATION

Q. A part of one of the cross questions asked you if you had not suppressed evidence in this case, have you suppressed any evidence for or against any party in this case?

A. I have not.

Q. Have you collected any evidence in this case?

A. I have not.

RE CROSS EXAMINATION

Q. Mr. Campbell's question *misconstrus* mine, did you not meet a party of men last May on Knox Creek who were going to Race Fork, the party consisting of Mr. Dixon, Lawrence Auvil, Judge Counts and some others and counsel some of them against going there to investigate an alleged or pretended coraer?

A. I remember of meeting Mr. Dixon, I am not sure but I believe L. G. Stacy was with them, Auvil, Counts is all that I remember of and I disremember who was with me but I believe a brother of mine, E. E. Coleman and as to the conversation, I do not remember the conversation that was taken place.

Q. Squire L. G. Stacy is your uncle is he not?

A. Yes sir.

Q. He has been Justice of the Peace in the District where he lives for twenty years or more, *hasent* he?

A. I *couldent* say how long he has been Justice but it has been for some time.

Q. Can you remember back to a time when he was not?

A. It seems to me I have recollection when he *wasent* Justice of the peace. Being away at work and attending school I never gave such thing very much thought.

page 288.] Q. During what time and how long were you away from home?

A. I *couldent* say how long I have been away from home as I have made my home principally where I worked. I have been away four or five years probably more than that, I *dident* stay away all that time but was in there and out.

And further this deponent saith not

H. M. COLEMAN

2 days and 76 miles.

ADAM JUSTUS, a witness introduced by the contesting defendants after being first duly sworn upon oath testifies as follows.

EXAMINED

By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age 33 years, I live on Knox Creek near Hurley Virginia, I follow logging

Q. How long have *have* you been living on and acquainted with the country and people on Knox Creek?

A. I was born and raised on Knox Creek.

Q. Are you acquainted with the following named persons: Daniel Justus, Andy Justus, Sennett Justus Morgan Justus and Lafayette Justus, brothers, and John J. Justus, son of Joab Adam Justus son of Simeon, John Justus son of Wiley and Reece Davis?

A. Yes sir.

Q. How long have you known them?

A. I have known them for several years.

Q. Do you know the reputation for truthfulness of each of them in the neighborhoods where they respectfully reside?

A. Yes sir.

Q. What is that reputation as to each of them, good or bad?

A. Well sir it is not very good.

page 289.] Q. Is that reputation good or bad?

A. Well it is bad.

Q. From that reputation are said person or either of them worthy of belief on oath?

A. Well sir I *wouldent* believe them

Q. The question is are *the* worthy of belief from their general reputation?

A. From their general reputation I dont think they are.

CROSS EXAMINATION

By Judge Stiles.

Q. What do you understand by a bad reputation for truth and veracity?

A. Well sir the general report of the country around there dont give them good reputations.

Q. When did this general report arise?

A. I dont know exactly but several years ago I heard it talked.

Q. Who talked it?

A. I dont know exactly to state any certain ones but a great many in the country.

Q. That report merely related to the persons mentioned and not to any one else did it?

A. No sir not that I know of.

Q. Everybody else over in that country has a good reputation in that respect have they?

A. I dont know that. I guess there are some more that are not so very good.

Q. Who requested you to come here and testify in this matter?

A. Mr. Campbell.

Q. Did Levi Lester come after you or serve a subpoena on you?

A. No sir.

Q. You had a difficulty with some of these witnesses that have been referred to?

A. Yes sir I had a difficulty with Reece Davis.

page 299.] Q. That grew out of this case *dident* it?

A. Yes sir.

Q. That was before he was called as a witness *wasent* it?

A. No sir I dont think it was I think it was since.

Q. Can you tell about when that occurred—what day and what month?

A. I dont remember exactly but as well as I remember it was in last July.

Q. Do you claim any land or timber on Knox Creek? that is in dispute with Mr. King?

A. Yes sir.

Q. You are a defendant in the suit of King against Joshua Justus and others in the United States Court?

A. Yes sir.

Q. Are not some of these Justuses Daniel, Sennett and the others, whom you are called to impeach relatives of yours?

A. Yes sir.

Q. Are you employed by W. M. Ritter or by the Ritter Lumber Company

RE-DIRECT EXAMINATION.

Q. State what occurred between you and Reece Davis?

A. We was together there on Knox Creek near the post office at Hurley and he kept talking around seemed that he wanted a fuss out of some one and he walked up to me and pulled out a right smart little roll of money and got to bragging about the money he had and I asked him how he come by it and he said he guessed he come by it honestly—I think he said, and I said Mr. Davis I dont believe you did" and he said you are a *dam* liar and I knocked him down and kicked him all I wanted to and walked off and left him.

Q. What relation did that have to Davis' testimony?

A. Not any at all.

Q. The question on cross examination asked you if you had difficulty with some of these witnesses and you replied that you had with Reece Davis and you were then asked if that did that difficulty grow out of this case?

page 292.] A. No sir from what people tells me, from the

A. Well sir I had been told by several parties that he had been going off down here with Dan Justus, making several trips and when I heard that and got to drinking and bragging around about his money and I just took a notion to whip him a little about it when he got to bragging about it and gave me the lie.

And *firther* this deponent saith not.

ADAM JUSTICE.

2 days and 76 miles.

HARRISON JUSTUS a witness introduced by the contesting *defendats* after being first duly sworn upon oath testified as follows.

EXAMINED

By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age 33 years, I live on the Lesters Fork of Knox Creek and am a farmer.

Q. How long have you lived on the waters of Knox Creek in that neighborhood?

A. I was born and raised in that neighborhood—on that creek.

Q. Are you *acquianted* with Daniel Justus and Andy, Sennett, Morgan and Lafayette Justus, John J. Justus, son of Joab, Adam Justus, son of Simeon John Justus, son of Wiley and Reece Davis, and if so how long have you known them?

A. Yes sir, I have known them ever since I knowed anything, except the younger one and they have grown up since.

Q. Do you know the general reputations for truthfulness of each of said persons in their respective neighborhoods?

A. Yes sir.

Q. Is that reputation for truthfulness good or bad?

A. It is bad.

Q. Are they or either of them worthy of belief on oath, judging from *the* that reputation?

page 292.] A. No sir from what people tells me, from the talk of the country people there.

CROSS EXAMINATION

By Judge Stiles.

Q. You know Joab Justus?

A. Yes sir I do.

Q. How is his reputation?

A. He always bears the name of having a good reputation.

Q. And his son bears a bad reputation?

A. Yes sir.

Q. Joab testified in this case against Mr. King and his son for him *dident* he?

A. I dont know that.

Here the witness himself states that he was mistaken in the John J. Justus, son of Joab, as he thought it was John Justus son of Wiley that he testified to in response to a question on direct examination.

Q. John J. Justus, Joab's son, then is a man of good reputation?

A. Yes sir, I never heard anything said *aginst* him.

Q. Have you ever heard any one prior to the taking of the testimony in this suit talk about Reece Davis as being an untruthful man?

A. I have heard his brothers say that he was a kind of a lying man.

Q. He had had some trouble with them *hadent* he, some law suit?

A. He lied them out of some money I suppose. He borrowed some money from what I hear and lied to them and *wouldent* pay the money back.

Q. *There* the only ones you heard say anything about him?

A. Yes sir.

Q. Now Morgan Justus, is a man of good repute *isent* he?

A. The country report is all that I know.

Q. You have known him a long time *havent* you?

A. Yes sir.

Q. You never have known anything against his truthfulness yourself?

A. No sir not myself, just the report of the people.

Q. That report you heard principally just of late?

page 293.] A. No sir not of late back some years ago I heard the report—it has been a couple of years.

Q. You had not heard anything about him before that?

A. About two years, it may have been as long as that time or may be longer is the first time I heard it.

Q. And you had not heard anything about him since until lately?

A. No sir not until lately.

Q. Who summoned you to come here?

A. I *wasent* summoned to come here at all, I started down here to buy a farm down near Warfield and they held me over on this case. I *dident* come here on this business at all. Levi Lester got me to stay and there was some other man I dont know as he was a stranger.

And further this deponent saith not.

HARRISON JUSTUS.

2 days.

HIRAM LANE, a witness introduced by the contesting defendants after being first duly sworn upon oath testified as follows.

EXAMINED

By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age about 60 years, residence I live on Guesses Fork of Knox Creek and am a farmer?

Q. Are you the same Hiram Lane who testified in this case once before

A. Yes sir.

Q. Do you know Daniel Justus, Andy Justus, Sennett Justus, Morgan Justus and Lafayette Justus, also John J. Justus, son of Joab, John Justus son of Wiley, and Adam Justus, son of Simeon and Reece Davis, if so how long have you known them?

A. Yes sir I know them all; I have known them from their cradles up generally.

Q. Do you know their general reputations for truthfulness in *then in the* neighborhoods in which they respectively reside?

A. Yes sir I think I know it.

page 294-5.] Q. Is that reputation of each of them good or bad?

A. Well it is generally bad.

Q. From that reputation are they worthy of belief on oath?

A. Well a part of them—this John J. Justus I dont know that I ever heard anything relating to his lying or swearing to lies, as to the balance of them I really *couldent* believe them as far as my information goes.

Q. Judging from that general bad reputation for truthfulness are they worthy of belief by any body else, generally?

A. Well sir I dont believe their neighbors in the country there confide them as to truth and veracity.

CROSS EXAMINATION.

By Judge Stiles.

Q. How long have you been acquainted with Reece Davis?

A. Ever since before he was fairly grown.

Q. Do you personally *known* anything against his truthfulness?

A. I dont personally.

Q. How much talk have you ever heard among the people who do know him about his truthfulness or want of it?

A. I have heard some people say that there *wasent* no confidence in what Reece said.

Q. Did you ever hear any one besides his brothers complain about him in that way?

A. I think I have heard Westly Justus make remarks of it.

Q. How long ago was that?

A. I *couldent* tell you that. I heard his Uncle David Charles say that *he* was no confidence to be put in him and he was no account and so on.

Q. Did you ever know of any one attempting to contradict his oath, in court, prior to this case?

A. I never did, as I remember.

And further this deponent saith not.

HIRAM LAYNE.

2 days and 38 miles.

page 296.] JACKSON LESTER, a witness introduced by the contesting defendants, after being first duly sworn upon oath testified as follows.

EXAMINED

By Mr. Campbell.

Q. State your age, residence and occupation.

A. Age 43 years, I live on Guesses Fork of Knox Creek and *and* am a farmer.

Q. How long have you lived in that neighborhood?

A. Nineteen years this January *comaing*.

Q. Are you acquainted with Daniel Justus, Andy Justus, Senette Justus Morgan Justus and Lafayette Justus ,brothers, *a* also John J. Justus, son of Joab, Adam Justus son of Simeon, John Justus, son of Wiley and Reece Davis?

A. Yes sir.

Q. How long have you known them?

A. Daniel Justus about 22 years, and the other parties I have knowed them about nineteen years.

Q. Do you know the general reputation for truthfulness of each of said persons in their respective communities?

A. Yes sir.

Q. Is that reputation good or bad?

A. It is bad through their country and neighborhood?

Q. Are they worthy of belief on oath?

A. I dont consider they are under the reports of them.

CROSS EXAMINATION.

Q. Are you related to Levi Lester and if so how?

A. Yes sir we are brothers.

Q. Do you know Dan Justus and Dan Blankenship having a fight or some trouble?

A. Yes sir.

Q. What sort of trouble was that and when did it occur and who was mixed up in it?

Objected to by contesting defendants.

A. It has been so long that I cant tell for certain
page 297.] who all were mixed up in it. It has been about 15
or 16 years ago. It was a fight. Dan Justus knocked Dan Blankenship in the head with a rock.

Q. Did you have some part in it?

A. No sir I had no fight in it. I had nothing to do with it.

Q. Where does Lafayette Justus live?

A. When he is at home he lives in Webster county, West Virginia, they say.

Q. He has been living there or at least away from Knox Creek for three or four years or more, *hasent* he?

A. About that, he moved out last Spring was two years ago.

Q. Prior to that he had lived down near Matewan, *hadent* he?

A. Not that I ever knowed of.

Q. How old a boy is he?

A. I dont know for a certain, to guess at it I guess he is some 24 or 25 years.

Q. Prior to the taking of testimony in this case do you mean to say that you have heard any general talk among the Knox

Creek people about the truthfulness of Reece Davis, or his want of truthfulness?

A. Yes sir.

Q. Who did you hear talk about it?

A. Why I have heard several. I heard old man *Jushua* Justus, and I have heard these Lester Fork fellows talk a good deal about it.

Q. Now what Lester Fork fellows, mention some of their names?

A. Dee Justus and Westly Justus and I believe that is all that I can recollect of at this time.

Q. The Dee Justus that you speak of is the same as James R. Justus who testified here yesterday?

A. Yes sir.

Q. Josh Justus bears a pretty shaky reputation himself, *doesent* he?

A. Why I dont know that I ever heard anything said out of the way against Josh.

page 298.] Q. And further this deponent saith not.

his

JACKSON x LESTER.

mark

2 days and 80 miles.

JEFFERSON LANE a witness introduced by the contesting defendants, after being first duly sworn, upon oath testified as follows.

EXAMINED

By Mr. Sheppard.

Q. State your age, residence and occupation?

A. Age about 41 years, live on Knox Creek, Buchannan County, Virginia and am a farmer.

Q. Are you acquainted with Daniel Justus, Andy Justus, Sennett Justus, Morgan Justus, and Lafayette Justus, brothers,

also John J. Justus, son of Joab, Adam Justus, son of Simeon, John Justus, son of Wiley, and Reece Davis?

A. Yes sir I am acquainted with all of them, I know Reece Davis when I see him, I dont live near or right close to him.

Q. How long have you *know* them?

A. Ever since we was all chunks of kids.

Q. Do you know the general reputation for truthfulness of each of said persons in their respective communities?

A. Yes sir I know it.

Q. Is that reputation good or bad?

A. It is bad.

Q. From that reputation are they entitled to belief on oath?

A. If the reputation be true I *shouldent* allow that they would be allowed belief on oath. I dont know nothing about Reece Davis except what I heard.

CROSS EXAMINATION.

By Judge Stiles.

Q. You *havent* heard anything about Reece Davis until very recently have you?

A. Yes sir I never heard much good of him all my life.

Q. But you never heard anything said about his

page 299.] want of truthfulness, did you?

A. As well as I remember I heard them say that he was nothing but an old vagrant and a blow and bad after the *woman*, they say so.

Q. What you heard mostly was about his taking after the women, *wasent* it?

A. Women or just a vagrant or strolling around, a vagrant or trying to dead beat his way around.

Q. He has been a man of some property *hasent* he?

A. Well sir I have seen him riding a horse beast a time or two but to know whether it was his or belonged to his family I dont.

Q. What do you know about John J. Justus, son of Joab, have you ever heard his truthfulness questioned?

A. I have heard people say that he was very bad to talk that which he *oughten* to be talking—that which is not so.

Q. Whom did you hear say so?

A. Well I dont remember who all I have heard.

Q. Do you remember one?

A. I dont know right at this time who I did hear but any how the reputation of him is bad.

Q. Then the other men who have testified yesterday and to day that his reputation was not bad are mistaken are they?

Objected to by contesting defendants. Witness have not testified that the reputations of John J. Justus was good but some said that they had heard nothing against it.

A. I dont know what they know or what they heard I am swearing to what I heard.

Q. Who had you come over *hear* to testify against these people?

A. I reckon Mr. Campbell, I came down to Joshua Justuses and I met him there and told him about what I have testified here.

Q. Did Levi Lester have you come down to Joshuas and meet him?

A. If Levi Lester ever named it before me I dont remember it before this time.

page 300.] Q. Levi met you some where there *dident* he? and told you what he wanted of you?

A. Levi Lester, as well as I remember was at Joshua Justuses when I went down. He said that Mr. Campbell had sent a summons or sent for me to come down here.

And further this deponent saith not.

his
JEFFERSON x LANE.
mark

2 days and 80 miles.

H. M. COLEMAN being recalled for further cross examination testified as follows.

EXAMINED

By Judge Stiles.

Q. Did you recently prosecute W. W. Baldwin and J. T. Raines for trespass

A. Yes sir. I was called on by John R. Justus to appear before the magistrate said that he wanted to appear for him that some parties had been trespassing on his land.

Q. What was the nature of the trespass *compalined* of?

A. Mr. Justus claimed that they were surveying over his land without any right.

Q. Where they surveying?

A. I do not know myself only what the witnesses swore. The witnesses testified to it being on Guesses Fork.

Q. They were running a meander line of that creek?

A. I dont know what they were running we *couldent* find out. They refused to go on the witness stand and testify.

Q. They were found surveying along the creek where the road runs?

A. I *couldent* say that, I do not know that myself.

Q. Was that not developed in the course of the case?

A. I dont remember that it was—that they were surveying along the road.

Q. Well along the creek

A. I am not positive but it comes to my mind that there was something said about surveying down in the creek.

page 301.] Q. The alleged trespass consisted entirely of their going across this land along the creek?

A. I *couldent* say that it was as to just the land along the creek.

Q. Did it *develope* that they were doing this work for Mr. King?

A. I *couldent* say that it did, they denied it all the time, claimed on the day of trial that they were making this survey of the creek in order that they could make a map and make something out of it—that they wanted to make a map of the *creks* and the whole country.

Q. Mr. Baldwin you say was the County Surveyor and Raines was his partner?

A. Yes sir, they were partners.

Q. What disposition was made of the case?

A. It is still in court.

Q. In what situation?

A. They was tried and found guilty before the Justice of the Peace and they appealed to the County Court.

Q. What was the judgment of the Justice?

A. Fifty Dollars fine each.

Q. Did you as Prosecuting Attorney demand a fine for as much as $50.00 for a mere *tecnecal* trespass of that sort, if it was a *trespas?*

A. I dont remember that I asked for any fine at all if I did I dont remember the amount.

Q. You thought the judgment of the Justice a proper one?

Objected to by the contesting defendants.

A. I think the decision of the court was proper from the evidence in the case.

Q. Was there any evidence that one cents worth of damage was done?

A. I dont remember the proof as to what the damage was.

Q. Was there any proof of damage?

A. I dont remember.

Q. They were suspected of doing this surveying on behalf of Mr. King.

page 302.] Question by the Witness. Who suspected them?

Answer by attorney. By you, or the Justice or by John B. Justus the prosecuting witness, *wasent* that the talk?

A. Mr. Justus said to me that there was some one, I believe he called their names were surveying on Guesses Fork but I dont remember that he said who they were surveying for. As well as I remember I told Mr. Justus that they had no right to survey over his land without permission from him or an order from court.

Q. You thought it was a crime that ought to be punished by a fifty dollar fine, *dident* you?

A. As I stated before I dont remember about the fine whether I asked for any or not.

Q. Did you not at that time make an announcement to the people of the country that you as Commonwealths Attorney would not prosecute any one for anything they might do to prevent any *ony* one surveying in there for Mr. King or the Wilders or something to that effect?

A. I have no recollection of it.

Q. Have you not made such a declaration or announcement or one similar to it any time?

A. If I did I have no recollection of it—I cant call it to memory if I did.

Q. Was not a proposition made that if Baldwin and his men would agree to get out of there and not do any surveying for King that the fine would be suspended and the same not *inforced*, or something of that nature?

A. There was no such agreement that I know of, not by me.

Q. John B. Justus has been called here as a witness on the same question as yourself has he not.

A. I suppose that he has.

Contesting defendant move to strike out all of the testimony of the witness adduced upon his recall, as improper.

page 303.] REDIRECT EXAMINATION.

By Mr. Campbell

Q. Did it develop at the trial that said Baldwin and Raines had been warned not to trespass by surveying or otherwise upon the land or premises belonging to Justus?

A. It did. John B. Justus as well as I remember testified that he had notified them.

Q. Did it also develop that they persisted in entering his premises notwithstanding the warning?

A. They went on surveying until they were *a rested*.

RE CROSS EXAMINATION.

Q. It also developed did it not that Mr. Justus objected to their walking across the land claimed by him because he thought they were surveying for King and for no other *preason*?

A. I cant say that he objected to them *alking* across it or what he thought.

And further this deponent saith not.

H. M. COLEMAN.

J. E. HALL, a witness introduced by the defendant after being first duly sworn upon oath testified as follows.

EXAMINED

By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age 48 years, I live on Guesses Fork of Knox Creek and am a farmer.

Q. How long have you lived in that country?

A. I was born and raised in that country.

Q. Do you know Daniel Justus, and his brothers Andy, Sennett, Morgan, and *and* Lafayette also John J. Justus, son of Joab, Adam Justus, son of *simeon*, and John Justus son of Wiley and Reece Davis, if so how long have *have* you known them?

page 304.]

A. Yes sir I have known them ever since they were boys.

Q. Do you know the general reputation of each of them for truthfulness in the community where they lived?

A. I know the country reports.

Q. Is that reputation good or bad?

A. Well sir it has been bad.

Q. Judging from that reputation are they or either of them worthy of belief on oath?

A. Well sir I *couldent* believe them.

Q. The question is are the worthy of belief, judging from that *reputaln*?

A. I dont think they are sir.

CROSS EXAMINATION

by Judge Stiles.

Q. Have you had any dealing with the persons mentioned?

A. Well sir I have some with some parties of them.

Q. Did you ever hear any of them testify in court?

A. I dont recollect I believe I have heard one or two of them.

Q. Which ones?

A. Daniel and Sennet.

Q. Do you know anything *o* your own personal *acquaintence* and knowledge against the truthfulness of all or any of these men?

Not to my recollection at this time, not within myself.

Q. When you stop to think of it can you really say that what you have heard of these eight or ten men is such that you *couldent* believe the solemn oath of any one of them especially in a case not his own?

A. Well sir from the reputation they bear I *couldent.*

Q. How many people have you heard speak of the truthfulness of any one of them?

A. I dont remember sir how many I have heard.

Q. Do you recall the name of any one that you have heard?

A. Yes sir. I have heard Joshua Justus talk some and have heard Hiram Land, Jackson Lester, Isiah Lane, I dont remember how many I have heard talking about these people.

page 305.] Q. Who first proposed to you to come out here and testify as to this matter?

A. Hiram Lane and Jackson Lester were the first men that talked to me then Levi Lester came to my house.

Q. And further this deponent saith not.

His
J. E. X HALL.
mark.

2 days and 78 miles.

LEFTWIDG JUSTUS, a witness introduced by the contesting *defend* after being first duly sworn upon oath testified as follows.

EXAMINED

By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age 43 years, I live *of* Guesses Fork of Knox Creek *abd* am a farmer.

Q. How long have you lived there?

A. Ever since I was born.

Q. Are you acquainted with Daniel Justus and his brothers Andy, Sennet, Morgan and Lafayette also John J. Justus son of Joab, Adam Justus son of Simeon, John Justus son of Wiley and Reece Davis?

A. I know them all sir.

Q. How long have you known them?

A. I have *knowed* them all outside of Reece Davis ever since they were born *ad* I have *knowed* him I expect 25 years.

Q. Do you know the general reputation of each of them for truthfulness in their respective communities?

A. Yes sir.

Q. Is that reputation good or bad?

A. Well sir it is *tolerble* bad.

Q. Judging from that reputation are they or either of them worthy of belief on oath?

A. I dont think you can give them good credit sir.

CROSS EXAMINATION

by Judge Stiles.

Q. You speak of their reputation do you yourself know anything against the truthfulness of all these eight or ten men?

page 306.]

A. I dont know a great deal but they wont tell a man the truth a heap of them.

Q. What do you mean by that they *wouldent* tell a man the truth?

A. Well I just meant that they wont tell a man the truth a heap of times when he asked them anything.

Q. If they tell him anything will they tell the truth?

A. They are just as apt to tell him that *that haint* so as the truth.

Q. Did they ever do that with you?

A. Why I have had some few of them.

Q. Which ones?

A. There was some several of them.

Q. Name the ones you refer to?

A. John Justus was one of them.

Q. What was it about that he told you?

A. I *couldent* recognize that he lives right close neighbor to me. *Ne* tells me things that *aint* so and I never charge my mind with things like that you know.

Q. Can you mention any other that has told you the same sort of untrue stories?

A. I think Sennett Justus is pretty bad for it.

Q. The talk that you had with him was just common gossip

A. Yes sir.

Q. You never saw either of them put on their oath about any matter?

A. I *gues* I have but I *couldent* recognize that I dont pay much *attentin* to lawing.

Q. You are in a lawsuit with Mr. King over some land on Knox Creek are you not?

A. Yes sir.

Q. Did Levi Lester get you to come out here?

A. No sir, he never said anything to me about it. Mr. Campbell sent word to me. Adam Justus brought the word to me.

LEFTRIDGE JUSTUS.

2 days 84 miles.

page 307.] FLOYD JUSTUS, a witness for the contesting defendants after being first duly sworn upon oath testifies as follows.

EXAMINED

by Mr. Campbell.

State your age, residence and occupation?

A. Age about 38 years, residence on Guesses Fork of Knox Creek and *and* am a farmer.

Q. How long have you lived in that part of the country?

A. I was born and raised there.

Q. Are you acquainted with Daniel Justus and his brothers Andy, Sennet, Morgan and Lafayette also John J. Justus son of Joab, Adam Justus son of *simeon*. John Justus, son of Wiley and Reece Davis, if so how long have you known them?

A. Yes sir. I have known them ever since I have been just a small kid you might say.

Q. Do you know the general reputation for truthfulness of each of said persons in their respective communities?

A. Yes sir.

Q. Is that reputation good or bad?

A. It is generally bad.

Q. Judging from that reputation are they or either of them worthy of belief on oath?

A. No sir not from that reputation they are not.

CROSS EXAMINATION.

A. Do you personally know anything against the truthfulness of any of them?

A. Well I heard some one of them say that they had sworn false in favor of *other* to get them out of trouble they were in.

Q. Which one made that confession?

A. Sennet Justus.

Q. He is the only one that you know anything about personally as not being truthful?

Yes sir.

page 308.] Q. Whom have you heard say that these other men were not truthful?

A. I have heard a good many say it, it is the general talk in our neighborhood. That family of people have always been in a great deal of trouble in the courts and it has always been the talk that they would swear anything—that they could prove anything by one another.

Q. Do you remember whom you heard say that?

A. I heard it talked by Hiram Hall when he was Sheriff and I heard it said by Hiram Lane and I heard it said by General L. Blankenship, I cant recollect but I dont know how many I have heard it of.

And further this deponent saith not.

FLOYD JUSTUS.

2 days and 84 miles.

ISIAH LANE, a witness introduced by the contesting defendants after being first duly sworn upon oath testifies as follows.

EXAMINED

by Mr. Sheppard.

Q. State your age, residence and occupation?

A. Age 33 years, residence on Knox Creek on the right hand fork of Guesses Fork and am a farmer.

Q. Are you acquainted with Daniel Justus, and his brothers Andy, Sennet, Morgan and Lafayette also John J. Justus, son of Joab, Adam Justus son of Simeon, John Justus son of Wiley and Reece Davis, if so how long have you *know* them?

A. Yes sir, I have known Daniel Justus ever since I have known *anythig* and principally the rest of them.

Q. Do you know the general reputation for truthfulness of each of said persons in their respective communities?

A. Yes sir.

Q. Is that reputation good or bad?

A. Well its pretty bad from the general talk of the people.

Q. Judging from that reputation are they entitled to belief on oath?

A. Well sir I dont believe I could. I dont think the reputation *th* I know of them that I could give them

page 309.] credit on oath.

CROSS EXAMINATION

by Judge Stiles.

Q. You dont claim to know anything against the truth of these

men of your own knowledge do you?

A. I dont think that would be a fair question. I certainly know of my own knowledge that I *couldent* give some of them credit on oath.

Q. What ones?

A. Adam Justus, John Justus, son of Wiley and Morgan Justus.

Q. What is the reason you *couldent* believe them?

A. I have known them swearing false.

Q. In what case?

A. Well in a case pending betwixt myself and the Commonwealth.

Q. What kind of a case was that?

A. I was charged with a *sudusting* of a girl under 16 years old and for John Justus for breaking into Daniel Mantaney's house.

Q. Were you convicted in the case?

A. Yes sir, in the lower court I appealed it to the Circuit Court and got a new trial and come clear.

Q. Were you convicted in the other case?

A. I was not charged with the housebreaking but was a witness for the Commonwealth.

Q. You had some other difficulty *fident* you with the court about taking corn from Coleman's corn crib?

A. Yes sir.

Q. You and some other person were charged with breaking in and stealing corn out of Mr. Coleman's corn crib?

A. Yes sir.

Q. Who was the other party?

A. John William Justus.

Q. He turned States Evidence did he not?

A. Yes sir he was a witness for the Commonwealth.

Q. And you were convicted on his testimony?

A. Yes sir and fined five dollars and fifteen hours in jail.

Q. John William Justus was just as guilty as you
page 310.] were *wasent* he?

A. He was *he* guilty man.

Q. He is here now to impeach the character of the Justus boys and Reece Davis, *isent* he?

A. I dont know about that, he probably might be.

Q. Were any of these boys that you speak of Morgan and John and Adam and the rest of them prosecuting or testifying falsely in any of these cases you have mentioned?

A. No sir.

Q. Did you ever know of any of them or Reece Davis being accused of *arjury* or any infamous crime?

A. I don think I ever heard Mr. Davis accused of *Perjury* only for a while back.

Q. Did you ever hear *o* Davis or any of these others being charged in court with false *sweaing*?

A. I dont think I have.

Q. Reece has always *bourn* a pretty good reputation for truthfulness until right lately *hasent* he?

A. Not s for just truthfulness or work of mouth but as to on oath I *havent* heard any hard things said against him.

Q. Reece has been rather numerous among the women *hasent* he?

A. I have heard some talk of his being pretty bad that way.

Q. I suppose that made some of the men around that county rather *agains* him *dident* it?

A. I dont know about that.

REDIRECT EXAMINATION.

Q. Did Justus boys you have named testify for or against you on the charge for seduction? ?

A. Adam testified for me, that is all the one that testified in that case.

Q. Do you personally know that his testimony given in that case was false?

A. Yes sir I do.

Q. What other Justus boys testified in behalf of himself in any other case.

A. John Justus testified for himself on his trial for breaking into Daniel Menteney's house:

page 311.] Q. In what case did Morgan Justus testify falsely?

A. He testified in the corn case. He testified for me.

Q. Do you personally know that the testimony given by him in that case was *fase*?

A. Yes sir.

Q. Do you have reasons to believe or do you know that Morgan Justus and Adam Justus knew the evidence they were giving in the cases mentioned was false?

A. Yes sir.

RE CROSS EXAMINATION.

Q. Did you make any effort to restrain them or either of them from testifying *flsely* in your behalf?

A. No sir I got them to testify in my behalf.

Q. It never occurred to you to impeach their reputations for truthfulness until after they testified in this case, did it?

A. No sir I *dident* have any occasion to.

Q. Did you testify in your own behalf in the cases referred to?

A. Yes sir I did.

Q. Did you testify falsely also?

A. If I did I done it through a mistake.

Q. Is it not possible that Morgan or Adam made the same mistake if they testified falsely?

A. No sir I *knowed* they *couldent* made no mistake.

Q. If they testified falsely then I suppose you were really guilty of the offense charged against you?

A. I want you to understand that I am not guilty of taking the girl, of *suducing* her, she was willing to go with me.

Q. She was under sixteen *wasent* she?

A. I dont know that.

Q. If you were not guilty and those witness testified to your

innocene or in support of your innocence, how did it happen that their testimony was false?

page 312.] A. Because they put it in such a way that I knew it was false.

Q. The seduction of a girl under 16 years constitutes rape in Virginia, does it not?

A. They had me charged with seducing a girl and taking her away from home and she was willing to go with me. I *dident* presuade her or nothing but told her she had better not leave her pa.

Q. The County Court found you guilty on the first trial, notwithstanding the evidence of the Justuses in your favor did it?

A. Yes sir.

Q. One of them testified in your favor in the corn case you say?

A. Yes sir.

Q. And you say his testimony was false?

A. Yes sir.

Q. You were guilty then in that case were you?

A. I suppose I was going a little further with it than I had ought to. I went to the crib or near it and John William Justus went on to the crib.

Q. And then he acknowledged the corn and gave you away?

A. Yes sir he testified against me.

Q. Who came to get you to come out here to testify against the *reputa* of these men?

A. I believe Mr. Jackson Lester made name to me that if Mr. Baldwin and Mr. Raines had hired me to guard them while they made a survey on Lesters Fork that Mr. Levi Lester said for me to come down and make a statement of it, or wanted me to come concerning that them gentlemen had *jirer* me to make the survey.

Q. He explained to you that he wanted you to testify against the truthfulness of these people, did he?

A. No sir he dident say anything about wanting any witness impeached.

Q. *Dident* he tell you anything about what you would be required to do when you got here?

A. No sir, not anything concerning the impeaching of witnesses.

Q. You were perfectly willing to impeach them if you could, were you not Even if it involved a confession of seduction, false swearing and attempting to steal corn on your part?

A. Well sir I *wasent* a caring for my part whether I impeached them or not. These parties had called me up here and I *knowed* it to be a fact *ad* I thought it took a long lane that never had no *turm*.

page 312*a*.] I suppose Levi Lester and Jackson Lester had heard of the various difficulties you had been in *hadent* they?

A. I suppose they have.

And further this deponent saith not.

ISAIAH LANE.

2 days and 36 miles.

Resumed taking depositions at *Williamsson*, this the 12" day of November 1902, pursuant to an adjournment made and had on yesterday.

Present the same attorneys as on yesterday.

W. W. JUSTUS, a witness introduced by the contesting defendants after being first duly sworn upon oath testified as follows.

EXAMINED

By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age 74 years, I live on the Guesses Fork of Knox Creek in Buchanan County, and am a farmer.

Q. How long have you lived in that section of country?

A. About 60 years.

Q. Are you acquainted with Daniel Justus, Sennet, Morgan, Lafayette and Andy, his brothers and Reece Davis, and Adam Justus, son of Siemon, John J. Justus, son of Joab, if so how long have you known them?

A. Yes sir I am well acquainted with them, I have known them ever since they have been born.

Q. Do you know the general reputation for truthfulness of each of them in the country where they live?

A. Yes sir.

Q. Is the reputation good or bad?

A. It is very bad sir.

Q. Judging from that reputation are they or either of them worthy of belief on oath by any person?

page 313.] A. I *couldent* answer that I dont know what any one else would believe I just gave you my opinion.

CROSS EXAMINATION

Q. Do you know anything personally against the truthfulness of John J. Justus, son of Joab?

A. He is generally along with that same crowd into trouble.

Q. The neighbors dont give him a bad name about telling the truth, do they?

A. I have never heard any neighbors say that he *wouldent* tell the truth.

Q. Did you ever hear any of your neighbors say that Reece Davis *wouldent* tell the truth on oath? prior to a few months past?

A. He has left home and the report is that he is *sorrier* than a dog and is larking around with other women. I heard that man Justus say out there yesterday that he—Adam Justus, sitting on the bench out there, *tha* he had got to be *sorrier* than a dog.

Q. Do you know John Justus, son of Wiley?

A. Yes sir I ought to know I raised him.

Q. He will tell the truth will he not when he is put on oath?

A. I never heard it disputed, Dan Justus so they said pursuaded him off down here and some of the neighbors accused him of swearing what was wrong. He is a son-in-law of that one armed man—Daniel Justus, and is a son of mine.

Q. Until that time you never heard any body speak ill of him as to his truthfulness?

A. No sir I never heard any *bdy* say anything about him. I never *knowed* he was in this thing until I came down here. I never heard anything said against his oath, he had never been sworn to my knowing, he came down here and they accused him of swearing a lie.

Q. You only heard him accused of swearing a lie since you came here day before yesterday?

A. As I came down I heard that talk up about John Justus' up at the mouth of Laurel.

page 314.] Q. The bad reputation of these other Justus boys is more on account of their fighting and trouble of that sort than on account of any alleged want of truthfulness, is it not?

A. It is for their bad reputation through the country for most every thing that is called mean.

Q. Do you yourself know personally *personally* anything against their truthfulness?

A. I know they lie, they *aint* good and truthy; I have been with them a heap about.

Q. Did they ever lie to you?

A. Well not more than other people that I know of—that is that they *dident* lie to me more than they did to other people. Dan Justus has the reputation of being a powerful blow but I dont know *twhether* he told mischief making lies or not.

Q. You never knew of any of these men that you have spoken of giving false testimony in court?

A. I never *knowed* such a thing personally but there is such a report as that.

Q. From whom did you hear that report?

A. From Squire Asbury—he said they *dident* swear the truth before him and he *wouldent* hear them.

Q. They generally accuse some body of swearing a lie in pretty nearly every law suit over in that country dont they?

A. I cant tell you that.

Q. You are a defendant are you not, in one of the King land suits over in Virginia?

A. Yes sir I reckon I am, I have never been noticed but they have got me they say. *Mt* land lays in the bounds I suppose.

Q. Who summoned you to appear here to testify?

A. Adam Justus.

And further this deponent saith not.

his
W. W. X JUSTUS.
mark.

3 days and 88 miles.

page 315.] J. S. SMITH, a witness introduced by the contesting defendants after being first duly sworn.

EXAMINED
by Mr. Campbell.

Q. State your age, residence and occupation?

A. Age 42 years, I live on the head of Guesses Fork of Knox Creek in Buchanan County, Virginia, and farm.

Q. How long have yoi lived in that part of the country?

A. Some better than three years.

Q. How long have you lived in the Knox Creek country.

A. About eight or ten years.

Q. Are you acquainted with Daniel Justus, and his brothers Andy, Sennet, Morgan and Lafayette, also John J. Justus, son of Joab, Adam Justus, son of Simeon, John Justus, son of Wiley, and Reece Davis, if so how long have you known them?

A. Yes sir I am acquainted with all of them. I have known them about fifteen years.

Q. Do you know the reputation, for truthfulness of each of them, in their respective neighborhoods?

A. I reckon I have heard right smart talk about them. I know what their reputations are.

Q. Is that reputation good or bad?

A. I suppose it is pretty bad.

Q. Judging from that reputation are they worthy of belief on oath?

A. Well from the reputation I dont suppose they would be.

CROSS EXAMINATION
by Judge Stiles.

Q. Have you known all of these men quite intimately during the last fifteen years?

A. Yes sir.

Q. Do you know or *jhave* you ever known of your personal knowledge and from your personal *asquaintence* with them anything against their truthfulness?

A. Well sir I never heard them state anything what I remember of. All I know is just the reputation.

.page 316.] Q. Have you had considerable to do with them or considerable associations with them?

A. I have been with them right smart.

Q. Did any of them ever lie to you, or do you know of their lying to any one else?

A. I dont have any remembrance at this time if they did.

Q. Do you know Levi Lester?

A. Yes I know him.

Q. Did he get you to come here or have anything to do with your *comig*?

A. Well sir Adam Justus came to my place, I suppose I was gone when he come, I suppose he come there to give me a notice to come down here.

Q. Levi Lester met you and others and toook charge of the party?

A. Yes sir.

And further this deponent saith not.

J. S. SMITH.

3 days and 88 miles.

K. H. JUSTUS, a witness for the contesting defendants after being first duly sworn upon oath testified as follows.

EXAMINED

by Mr. Campbell.

Q. State your age, residence and occupation?

A. Age 52 years, I live on Guesses Fork of Knox Creek, and I farm.

Q. How long have you lived in that country?

A. I was born and raised there, and have lived there all my life.

Q. Are you acquainted with Daniel Justus and his brothers, Senett, Morgan, Andy and Lafayette and also John J. Justus, son of Joab, Adam son of Simeon, John Justus, son of Wiley, and Reece Davis, and if so how long have you known them?

A. Yes sir I am acquainted *wit* all of them. I have known them all *fro* their youth except Davis who I have known about thirty years.

Q. Do you know the general reputation of each of them for truthfulness in the communities in which they respectively live?

A. Yes sir.

page 317.] Q. Is that reputation good or bad?

A. It is bad.

Q. Judging from that reputation are they worthy of belief on oath?

A. I *couldent* give them any credit.

CROSS EXAMINATION

by Judge Stiles.

Q. Now what have you heard the people say against old Joab's son, John J. Justus?

A. I heard several parties say that he taken five dollars to make a certain statement and his Pa told him to return the money?

Q. Who told you that?

A. My memory is that Hiram Lane for one and my memory is Isiah Lane *tol* me so.

Q. Do you know what the statement was?

A. My recollection is the statement that he was to make, Lane

was accused of stealing of a girl and my *recolection* is he was to make a statement that some other party done the thing.

Q. But John J. Justus *dident* make the statement did he?

A. I was informed that *hism* Pa told him to give the money back and not make the statement.

Q. And he *dident* testify in the case did he?

A. No sir.

Q. Lane really stole the girl and took her away and had intercourse with her *dident* he?

A. I cant say that he did.

Q. That is about the most you have heard against John J. Justus, *isent* it?

A. Yes sir.

Q. How long did Lane's trial over this girl scrape take place?

A. I dont remember perhaps it has been nine or ten years.

Q. Justus was quite a young fellow at that time *wasent* he?

A. My memory is that Justus had a family then.

Q. What have you heard said about the want of truthfulness of Reece Davis?

page 318.] A. Well it is about the country report over there, that is in our part of the country, that they *couldent* confidence him.

Q. What do they accuse him of mostly?

A. Well they accuse him of getting *drun* and of going to Mr. Stiles and the King people and getting what money he wants.

Q. His reputation for untruthfulness is based upon that is it not?

A. Well there is other hard sayings against him.

Q. Mention some of them?

A. I have heard it repeated by several *o* them that his wife had to pretty much keep herself up and keep the family up.

Q. What have you heard said about Dan Justus?

A. Well I have never *hearn* no good of him.

Q. Tell us of some of the bad you have heard of him?

A. Well sir the reports are that he has been into fighting, and

to make a short thing of it the general report is over there where I live, that nobody will give him credit as to truth.

Q. That has been the report particularly in the last few months, has it not?

A. That has been the report from his youth.

Q. Do you know anything about him yourself, did he ever lie to you that you know of?

A. The general report is all that I know of him.

Q. You have known him *every* since he was a boy have you?

A. Yes sir.

Q. *Dd* you ever know of any of these Justus boys about whom you have been asked ever lying to you or to any other particular person outside of mere joke or something of that sort, or ever giving false testimony in a court of Justice?

A. Why memory is that Adam Justus acknowledged in a trial of Lane's It was Adam or Elias I dont remember which, acknowledged that one got a coat and the other five dollars to make false testimony.

Q. All the alleged lying of these people occurred in the trial of Lane so far as you know?

page 319.] A. So far as I know it occurred at that time and before and since.

Q. Give us some instances before and since?

A. Well some instances since I have heard Mr. Lane say that he hired different parties, to testify to that that *wasent* right.

Q. So far as Dan Justus, for instance is concerned *isent* it a fact that his reputation for unreliability is merely that he is what you call a blow and is given to spinning interesting yarns?

A. His reputation has been very bad.

Q. What has it been worse about, for fighting or something else?

A. It has been bad enough for fighting, and it has been pretty bad on lawing, my memory is he has been accused of housebreaking.

Q. Was he ever convicted of house breaking or any crime that you have heard of?

A. No sir not to my recollection.

Q. Most of the people over there in that neighborhood are given to lawing *arent* they?

A. More or less lawing in the neighborhood.

Q. When they get through or before some body generally accused somebody else of "lie swearing"?

A. Sometimes you will hear such things as that and sometimes you wont.

Q. You *thing* it was pretty generally understood around where Dan Justus lived, among his neighbors that you *couldent* "confide" him?

A. From reports I *couldent*.

Q. Did Levi Lester get you to come here or summon you?

A. Why Levi Lester *axed* mé to come down here Monday Morning.

And further this deponent saith not.

his
K. H. X JUSTUS.
mark.

2 days and 92 miles.

page 320.] JOHN JUSTUS, a witness introduced by the contesting defendants after being first duly sworn upon oath testified as follows.

EXAMINED
by Mr. Campbell.

Q. State your age, residence and occupation?

A. Age 32 years. I live *of* the Guesses Fork of Knox Creek, I am a farmer.

Q. How long have you lived in that neighborhood?

A. I was born there and have lived there ever since.

Q. Do you know Daniel Justus and his brothers Morgan, Sen-

ett, Andy and Lafayette and John J. Justus son of Joab, John Justus, son of Wiley, Adam son of Simeon and Reece Davis?

A. Yes sir.

Q. How long have you known them?

A. I have known them ever since I was born me and part of them was raised up together and are about the same age.

Q. Do you know the general reputation of each of them in the communities in which they respectfully reside for truth?

A. Yes sir.

Q. What is that reputation as to each of them, good or bad?

A. It is bad.

Q. Upon that reputation are they entitled to credit upon oath?

A. No sir.

CROSS EXAMINATION

by Judge Stiles.

Q. Whom have you heard say that none of these men could be believed on oath?

A. A. C. Stacey, W. W. Justus, Isiah Lane and Alfred Welford and I have *hear leftwidg* Justus.

Q. It *sis* from these last named men that they get their bad reputations is it?

A. Yes sir I have *hearn* them and I have *hearn* that it was their general reputation ever since I was a boy.

Q. What did you hear about them?

A. I have heard that some stole and some swore false and some going around through the country making rackets

page 321.] and disturbances.

Q. What have you heard about each one of them?

A. Well Dan Justus I have known him to take mens girls and get out in the hills with them and having fights with the girls father: Sennet Justus was guilty of the very same trick, both at the same time; I have told you what I knew about their general reputation about their swearing, but to go to a particular crime now I dont know that I can.

Q. Did you ever hear of Daniel Justus or any of the rest of them, testifying falsely in court?

A. Yes sir I have heard of it all along the line.

Q. Well go on and tell what you have heard?

A. Well sir I have heard Isiah Lane say that he had hired them to swear false *or* him.

Q. What ones did he hire?

A. I dont *kjow* that he particularly said which ones.

Q. That is the only instance that you have heard of where any of *thee* men are said to have testified falsely?

A. Well just to tell you for sure that any one else said that they had got them to swear false, I dont know that I can tell you that.

Q. Did any of them ever swear *alsely* against you or lie to you?

A. No sir I never had any lawing in court in my life. I had one case but was never tried on it, it was dismissed. I dont know that I ever knew of them lying to me.

Q. What was that case that was against you and dismissed?

A. I was a witness in a case before the Federal Court against a fellow for retailing liquors and when we went to Abingdon Virginia, the Judge of the court ordered us to be put in jail for conspiring to get money from the government—but they dismissed the case.

Q. *Dident* you have some law suit or difficulty with Leftwidg Justus over a hog?

A. I bought a male hog from Pa and *Leftwitch* Justus claimed it and we left the matter to my father and Joab
page 322.] Justus for settlement and me and *Leftwitch* stood off.

Q. Leftwitch accused you of stealing the hog *dident* he?

A. No sir he never accused me of stealing it.

Q. Do you anything against the truthfulness of Reece Davis, yourself?

A. Nothing any more than he is bad to drink and run around a sight after women.

Q. That is all you have heard about him is it?

A. I have *heran* as I told you that his general *eputation* is bad all through the country.

Q. Bad for what?

A. Why for running around tattling a good deal mostly.

Q. Who is your father?

A. Joshua Justus.

Q. He is the Joshua Justus who is a defendant in one of the King suits in Virginia over some land on Knox Creek, is he not?

A. Yes sir.

Q. You are now claiming some of the same land are you not?

A. Yes sir.

And further this deponent saith not.

JOHN JUSTUS.

3 days and 78 miles.

WILEY JUSTUS, a witness introduced by the contesting defendants after being first duly sworn upon oath testified as follows.

EXAMINED.

by Mr. Lyon.

Q. State your age, residence and occupation?

A. Age 35 years, residence Knox Creek at the mouth of *PPnunding* Mill and am a farmer.

Q. How long have you lived on the waters of Knox Creek?

A. I was born and raised there and lived there ever since.

Q. Are you acquainted with Daniel Justus, and his brothers Morgan, Senett, Andy and Lafayette and John J. Justus son of Joab, John Justus, son of Wiley and Reece Davis, if so how long have you known them? and Adam son of Simeon?

A. Yes sir. I have *knowed* them ever since I have been big enough to remember.

Q. Do you know the general reputation of each of them in the communities in which they respectfully reside for truth?

A. I have heard a sight of people talk about them.

Q. What is that reputation as to each of them good or bad?

A. It is bad.

Q. Upon that reputation are they entitled to credit upon oath?

A. No sir I cant give them credit.

page 323.] CROSS EXAMINATION

By Judge Stiles.

Q. Whose son are you?

A. I pass for Joshua Justuses.

Q. You are a brother of the last witness John Justus?

A. Yes sir.

Q. Do you know of your own knowledge anything against the truthfulness of the persons about whom you have been asked?

A. I have heard them state a few times but I *wasent* concerned in the cases they were stating in.

Q. You *dont* undertake to say from your own knowledge of them that their oaths are not to be believed?

A. No sir.

Q. Have you known all of them very well all your life?

A. We have lived pretty close together most of the time.

Q. Have you ever heard anything against the truthfulness of John J. Justus, son of Joab?

A. Yes sir.

Q. What?

A. I heard his Pa say that he swore false in a case they had.

Q. Did he swear for or against his father?

A. I *couldent* tell you.

Q. What has been in times past the reputation of Wiley Justus' son John, as to truth?

A. According to the way people talk about him it is bad?

Q. What did they say about him and who said it?

A. I have heard his Pa talk some about him and I have heard Hiram Hall, Jr. talk some about him.

Q. What did his Pa say about him?

A. He said he *couldent* believe him under oath.

Q. When did he say that?

A. It has been some time ago I *dont* recollect exactly when.

Q. Then he must have been mistaken when he

page 324.] testified here this morning to the effect that he was truthful?

A. I *dont* know anything about that, he said he *couldent* believe him some time ago.

Q. How long ago as near as you can tell?

A. It has been over a week.

Q. Get it down as near as you can in weeks, months or years, I *dont* expect you to be exact?

A. I *dont* think it has been a year and it has been over a week.

Q. It has been since the taking of testimony in this case *hasent* it?

A. I *dont* know I never have heard any testimony myself.

Q. Well it has been within two months *hasent* it?

A. Yes sir it has been within that time.

Q. It has been within a month?

A. I *dont* recollect about that I *dont* think it has been over two months

Q. What have you heard about Reece Davis, and when and from whom?

A. I have hear so much talk about him I *dont* recollect exactly where abouts. I have heard Hiram Hall say that he was low down and said he *wasent* fit for anything.

Q. When did he say that?, it has been within a year?

A. I *dont* remember.

Q. Where was Hall and what were the circumstances and how did he happen to say it?

A. We was at Pa's at the mouth of Guesses Fork and just got to talking some way I *dont* remember how.

Q. They were talking about the King land suits were they-

A. Not that I remember of.

Q. Who else did you ever hear talking about Reece Davis?

A. I *dont* remember there was a right smart crowd there.

Q. Where were they and how did they happen to be talking about Reece Davis?

A. We was at Pa's..I *dont* remember how they came to be talking about him.

page 325.] Q. What had he done to become the subject of discussion?

A. I *dont* know what he had done, we was just bunched up there and the first thing I remember I heard Hiram Hall talking about him.

Q. That was upon the same occasion that you have already mentioned

A. This was all the same talk.

Q. Hiram was the man that was doing the talking *wasent* he?

A. Yes sir he is the one I heard talking about him.

Q. Was that the only time that you heard people talking about Reece Davis' character

A. I have heard people say that he was awful bad to blow around.

Q. What did he blow about.

A. I *dident* hear them say.

Q. None of them said that he *wouldent* tell the truth on oath?

A. I heard Hiram Hall say he *wouldent* believe him.

Q. Did you ever hear any other man say that?

A. I *dont* remember if I did.

Q. Now what have you ever heard any one say against the truthfulness of Lafayette Justus?

A. I have heard Isiah Lane say that he *wouldent* swear the truth.

Q. What have you heard any say against the truthfulness of John Justus, son of Wiley?

A. I heard his Pa say that he *wouldent* believe him and I heard Hiram Hall, Jr. talk about him too.

Q. When did Hiram say that?

A. I *dont* remember it has been some time ago—it has been over a month and maybe over a year, I *dont* remember how long ago it has been.

Q. Was it Hiram, Sr. or Hiram Jr. that you heard talking about Reece Davis.

A. It was the old man Hiram

Q. Whom have heard talking *agisa* the truthfulness of Morgan Justus.

A. I heard Isiah Lane say he hired him to swear a lie.

Q. When did you hear Lane say that.

A. This morning.

page 326.] Q. What have you heard any one say about Dan Justus not telling the truth on oath?

A. I have heard *sever* say that they have heard him swear false.

Q. Whom did you hear say it?

A. I have heard my Pa say it and old man Wiley Justus and have heard Jeff Lane say he *couldent* believe him on oath.

Q. When did you hear them say this?

A. I have heard my Pa say it so often I *couldent* tell when hardly. I heard him say it a long time ago.

Q. He said it a great many times the last few weeks or months *hasent* he

A. Yes and I have heard him say it a good while ago too.

Q. When did you hear Jeff Lane, and Wiley Justus?

A. It has been about a couple of weeks I think.

Q. How long ago is the first time you heard your father say that he *couldent* believe Dan Justus?

A. I *dont* remember it has been a long time—it has been years ago, one or two or maybe more.

Q. You father has had a great many law suits in Buchannan County?

A. He has had some law suits.

Q. Was Dan a witness in any of them?

A. If he was I *dont* know it.

Q. You mentioned all the persons that you think of whom you have heard speak against the truthfulness of these Justus' and Reece Davis have you?

A. No sir I *haint*. I *head* John William Justus say that Morgan Justus swore a lie.

Q. What kind of a fellow is John William Justus?

A. He seems to be a very good fellow.

Q. You think he is a fellow of good character?

A. Yes sir so far as I know he is.

Q. Does he bear that reputation over on Knox page 327.] Creek.

A. All the people I have heard talk about him say he is a very good fellow.

Q. Does Isiah Lane give him a good repuation?

A. I *havent* heard him say anything about him much no way.

Q. Isiah Lane bears a very good reputation there *dont* he?

A. I *havent* hear people say much about him outside of John William Justus. I heard him say this morning a little hard of him.

Q. What did he say?

A. He said that he had a trial and he swore that he *didnt* help steal some corn and he said that he did help steal it.

Q. They were both accused of stealing corn and John William Justus turned states evidence and proved it *didnt* he?

A. I believe that is the way I understood him to say.

Q. John William Justus is here as an impeaching witness *isnt* he?

A. I *dont* know, he is here?

Q. Your father is here too as a witness?

A. I *dont* know whether he is or not I never asked him

Q. In what case did you father say he heard Dan Justus swear fasely?

A. I never heard him say what case.

Q. Was it in any case?

A. I *dont* know that we was talking about any case at that time I heard him say that he *couldent nelieve* him on oath.

And further this *depinent* saith not.

WILEY JUSTUS.

3 days and 76 miles.

page 328.] ELIJAH ESTEP, a witness introduced by the contesting defendants, after being first duly sworn upon oath testify as follows:

EXAMINED
By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age 40 years, residence I live on the Paw-Paw Fork of Knox Creek Buchannan County Virginia and farm and saw log.

Q. How long have you lived there or on the waters of Knox Creek?

A. Ever since I was born, except a year or so.

Q. Are you acquainted with Daniel Justus, and his brothers Morgan, Senett, Andy and Lafayette and John J. Justus, son of Joab/ John Justus son of Wiley, Adam son of Simeon and Reece Davis?

A. Yes sir.

Q. How long have you known them?

A. We were all raised there in the same neighborhood. I have known ever since I was born.

Q. Are you acquainted with the general reputation of each of them in the community of which they respectively reside for truth?

A. There are two or three I *aint*, there is a young Justus boy a *brothert* to Dan I *aint* much acquainted with him, his name is Andy Justus, he is a young boy like, and John Justus, son of

Wiley I *aint* acquainted with, I am acquainted with the general reputation of the rest for truth?

Q. Is that reputation good or bad?

A. It is bad.

Q. Judging from that reputation are they entitled to credit on oath?

A. No sir.

CROSS EXAMINATION

By Judge Stiles.

Q. Do you know of your own knowledge anything against the truthfulness of the others, besides John and Adam?

A. Not within my knowledge I *dont*.

Q. What have you heard said against them by others?

A. I have heard that they *wasent* reliable in no respect.

Q. Was that said of some one of them or did
page 329.] they just take the whole as a group as they are
taken here?

A. Yes sir I heard them all talked about except them two boys.

Q. What have you heard any one say about Lafayette and when and who said it?

A. I *couldent* tell you exactly since they have come down here and swore I have heard Hiram Hall and John B. Justus and others I *counldent* call them all I have heard lots of them.

Q. You never heard anything particular about Lafayette before that did you?

A. He has always had a bad name.

Q. Well how did he get it and why?

A. By his meanness I guess.

Q. Can you state anything particular that you heard any one say before he testified in this case?

A. No sir only just his fighting and cutting up.

Q. Knox Creek is rather a fighting country *isent* it?

A. I guess so if a *feller* would fool with it.

What have you heard people say about Dan Justus and whom have you heard say it and when?

A. I *couldent* say who all I have heard I have heard all of his—I have heard John C. McCoy and several *ot er* talk about him.

Q. What did McCoy say about him?

A. He said he would swear lies or anything else that was mean.

Q. When did you hear him say that?

A. It *aint* been very long ago since I heard him talking about it last but I have head him a good bit ago.

Q. McCoy came down here with you as a witness did he?

A. Yes sir he came down.

Q. Now what have you heard said about Reece Davis that was bad?

A. About the same talk.

Q. Well from whom?

A. I *couldent* tell you exactly I have heard it
page 330.] talked so much.

Q. What did they say about Reece?

A. They said he is no account no way he *wont* stay at home and support his family or no one else.

Q. You heard that talk about him lately especially?

A. Yes sir, and I have known him from a boy up besides.

Q. Did he ever lie to you about anything?

A. I *couldent* say that he had.

Q. Did you ever hear of his being charged with lying in giving testimony in any case?

A. Yes sir.

Q. Tell us about that?

A. Several years ago him and the old man Dan Blankenship was in a law suit and he said Reece swore him out of a piece of land

Q. Is that all that you ever heard about his lying in court?

A. Yes sir I believe it is except about these corners.

Q. Who said he lied about these corners?

A. I have heard lots of them.—John B. Justus, Hiram Hall, Levi Lester, I *dont* think of any one else.

Q. Does John B. Justus pretend to know anything about these corners?

A. I never heard him say that he ever saw them.

Q. Did you ever hear Hiram Hall say that he say them?

A. No sir I just heard the general talk about them. They said he swore lies.

Q. *Havent* you hear Hiram Hall say that it was ridiculous to talk about there being any corners on Race Fork?

A. No sir.

Q. Did you ever hear him say that the people who said that there were corners there had done more lying than they would ever be forgiven for?

A. No sir I never heard such a thing said.

Q. Do you know anything about any corners there yourself?

A. No sir.

Q. Does McCoy pretend to know anything about any corners there?

A. He said he saw some trees there that was
page 331.] marked

Q. When did he tell you that?

A. I have heard him talk about it several times since we have been on this trip and before too—a good bit back.

Q. What have you heard about Morgan Justus not telling the truth?

A. I have heard all the same talk pretty much used about all the fellows.

Q. Can you recall anything particular about Morgan, what has been said about him and who said it?

A. I never expected to be called as witness in this thing and *dident* charge my mind about it. I heard them talking very *mad* about him, that he swore lies about these corners and where they stood and all.

Q. You hear that from the same people—John B. Justus and Hiram Hall and others?

A. The whole neighborhood around there were talking, them in particular.

Q. Can you name any one else in particular besides them?

A. No sir I never paid any attention to it, *dident* expect to be in this thing at all.

Q. You heard all that in the last few days or few weeks?

A. No sir I have heard it ever since they have been in this law suit, the last six months mostly. I mean the most of the talking that I paid any attention to has been in the last six months, about their reputations and the like their reputations have been bad enough all the time. When steal horses and in jail every way I call *if* pretty bad myself.

Q. Who was in jail?

A. Sennet Justus, they had him in and sent him to the penitentiary.

Q. Tell us about that.

A. I *dont* guess I will for I *dont* know much about it but I know he went just the same.

Q. How long ago was that.

A. It might have been some eight or ten years I *dont* know I never paid attention to the years.

Q. What was it about?

page 332.] A. For stealing a horse.

Q. He was about 13 years old then *wasent* he?

A. I dont know what he was.

Q. *Wasent* it a very long time ago?

A. It has been a right smart bit.

Q. He was pardoned out because he *dident* steal the horse *wasent* he?

A. I *dont* know how he got out. I heard he was pardoned.

Q. He has been appointed Jailor since that time has he not?

A. Yes sir.

Q. And is not a constable?

A. I suppose he is.

Q. Do you know who appointed Sennet Justus constable?

A. Judge Beavers

Q. Did he come with you as a witness?

A. I *dont* know what he came for, I never spoke to him in regard to this he is here.

Q. Who had you come here?

A. Levi Lester is the one that come after me.

Q. You are a defendant in one of the King suits are you not?

A. No sir.

Q. *Soke* of your *neighnors* are?

A. Yes sir.

And further this deponent *sith* not.

ELIJAH ESTEP.

3 days and 78 miles.

page 333.] JOHN C. McCOY, a witness introduced by the contesting defendants after being first duly sworn upon oath testified as follows.

EXAMINED

By Mr. Campbell.

State your age, residence and occupation?

A. Age 38 years old, I live at Grundy Virginia and am Deputy Clerk of County and Circuit courts of Buchannan County, Virginia.

Q. How long have you been deputy of said courts?

A. Since the 1st day of July 1899.

Q. Where did you reside before your residence at Grundy?

A. On Knox Creek and the waters of Knox Creek.

Q. How long did you reside on the waters of Knox Creek?

A. All my life except after I went clerking in 1899.

Q. Did you hold any official position while residing on Knox Creek if so what and how long?

A. I was Justice of the Peace either six or eight years.

A. Are you personally acquainted with Daniel Justus and his brothers Andy, Sennet, Morgan and Lafayette and also John J. Justus, son of Joab Adam Justus son of Simeon, John Justus—son of Wiley and Reece Davis, if so how long have you known them?

A. Yes sir I am acquainted with them. I have known Reece Davis and Daniel Justus as long as I have known any body and some of these younger ones I have known them all their lives.

Q. Do you know the general reputation for truthfulness of each of said parsons in the section where they each reside?

A. Yes sir.

Q. Is that reputation good or bad?

A. Bad.

Q. From that reputation of either of them worthy of belief on oath.

A. No sir they are not.

Q. Were you presen at a term of the County Court of Buchannon County held on the 24th. of January 1889 when Sennett Justus, a brother of Daniel Justus, was put on trial before a jury of his country?

Yes sir I was present.

page 334.] Q. Will you please file as part of your answer to this question a copy of the verdict and judgment in that case and mark it J. C. McCoy

Objected to by the defendant King.

A. Yes sir. I herewith file the said copy as part of my depositions marked as aforesaid.

Q. Did you make that copy and is it a correct one of the original?

A. Yes sir.

Q. What was the offense for which he was convicted and sentenced by that judgment?

A. Stealing a horse.

Q. Are you acquainted with the locality where Daniel Justus now resides on the right fork of the Race Fork of Knox, if so how long have you know that part of the country?

A. I have known the Race Fork all my life. Now right where Daniel Justus lives, I understand he has moved from where he used to live in the bottom up on the bank in the mouth of the hollow like on a kind of a flat or something.

Q. Did you ever do any surveying—land surveying?

A. Yes sir.

Q. Are you a practical surveyor?

A. Yes sir.

Q. Do you know W. W. Baldwin and S. A. D. Baldwin of Buchannan County

A. Yes sir I know them.

Q. Did you ever assist them or either of them in doing any surveying on the Right Fork of Race Fork at or near where Daniel Justus formerly lived, in the bottom or in the hollow on the right hand side immediately above, if so how many times and with whom?

A. Yes sir I assisted W. W. Baldwin and S. A. D. Baldwin in making a survey there, we were there twice, on two different days surveying in that neighborhood. I was there once with W. R. Lee who was then Deputy Surveyor of the county.

Q. Give us as near as you can the dates of these
page 335.] occasions?

A. I think I was in there in 1891 with Lee and it seems to me it was in 1894 when I was in there with Baldwins.

Q. What lines were you running when you were in there with W. R. Lee?

A. Well sir at that time we was lost on a line of the Charles A. Lonheart 2500 acre survey, and was hunting for a hickory corner.

Q. What lines were you running and what were you seeking to develop when in there with the Baldwins?

A. We were attempting to locate an 800 acre *sirvey* that George Harmon bought in for taxes and we were trying to locate it so that he could get a tax deed.

Q. Is that the Lonheart Survey or the May survey which binds on the *coleman* survey or 3645 acres?

A. Both Lonheart surveys of 2500 acres and 800 acres bind on the Coleman survey.

Q. Do you remember the hollow and small drain on the right hand side going up on the right fork of Race coming in immediately above where you say Daniel lived first?

A. Yes sir I remember the hollow.

Q. Did you when with the Baldwins enter this hollow and did you find *and* marked timber of any kind in that hollow?

A. Yes sir I did.

Q. Was there any clearing of any kind at that time in that hollow?

A. No sir.

Q. What kind of timber did you find marked, where did it stand and how was it marked?

A. Well, up on the left of the hollow some distance from the main creek there was two poplars stood, the poplar on the west more to the left side was marked I am not so positive as to the other poplar being marked. There was a cucumber marked not but a few steps from them poplars, down near this little branch that come in, it seemed to me that it stood in the branch, there was a beech stood a little bit north or [illegible]st from the poplar kind of quartering down the hill—it seems to me it was some eight or ten or maybe fifteen feet down below the poplar, was marked. The poplar was marked as though a line was coming in from the east and then was marked going out north, it seems to me like to be a little north-east.

page 336.]

Q. How many hacks did the poplar have on each side?

A. My recollection is the poplar had three hacks on each side, I *dont* think the beech had but two.

Q. How was the cucumber marked?

A. I *dont* think the cucumber was marked only on the north side?

Q. With two or three hacks?

A. I think it was with three hacks and they were pretty large hacks too, the hacks seemed to be cut through the bark, the bark seemed to be ruffled through and stand out considerable.

Q. About how far up in the hollow or drain did the poplar stand from the Race Fork

A. Well it seems the way it strike me it was about thirty or forty yard up the hollow from the Race Fork and on the upper side of a little path that run around the top of the bank some ten or fifteen steps above the path.

Q. Do you remember the little knoll at the mouth of that hollow at the lower side of the branch or drain and is it the bank over which the path run?

A. Yes sir.

Q. At the time you discovered these marked trees what were you looking for if anything?

A. At one time I was looking for three lynns in the Coleman survey, the time me and the Baldwin were there.

Q. Did you find the triple lynn?

A. No sir I did not find it.

Q. Did you find and run to or from the corner on a little rocky flat on the left of Race Fork going up described as two birches, white oak and hickory?

page 337.]

A. No sir I *dident* find that corner, we hunted for it and *dident* find it.

Q. Do you remember the poplar corner standing up in the mouth of the Hurricane Fork of the Right Fork?

A. Yes sir I do.

Q. Were the marks on the poplar in the hollow near Dan Justus' old or young in *appearence?*

A. They seemed to be old marks in the poplar.

Q. Did either one or both of the Baldwins see the marked poplar or poplars as the case may be and know that they were marked as corners?

A. Yes sir I suppose they did, we stopped at the roots of the trees and set the *compas* there for the purpose of seeing what poplar it was as we knew that there was a poplar called for in the Coleman survey and we set on that line to see if it would take us to, the three sourwoods and we found that it *wouldent* take us there—where the sourwoods was called for and we found that it was the wrong poplar.

Q. Did you afterwards find the right poplar and if so where did it stand?

A. Yes sir and it stood up in the mouth of the Hurricane Fork of the Race Fork.

Q. *Were* you ever up at the black gum and dogwood corner of the Coleman survey in the right hand hollow of the Race Fork. I mean near the Sulphur Spring?

A. I have been to the black gum and dogwood standing under a cliff called for in the Coleman Survey it is sorter up at the head of the *holw* that comes in at the sulphur spring.

Q. Did you ever run on the line called from that corner to the triple lynn?

A. Yes sir I have run on that line calling for the lynns but I never found the lynns.

Q. Did you see Daniel Justus on Race Fork on
page 338.] the 3rd. or 4 of May last on the occasion when Claud Goujot and Thomas Felts were in that section?

A. Yes sir I did.

Q. Had you shortly before that time heard anything about a trip that Daniel Justus had taken to Charleston, West Virginia, and about a certain affidavit made by Daniel Justus and a

certain contract he had entered into with the defendant Henry C. King?

A. Yes sir I had heard of him making a trip to Charleston and entering into a contract with Colonel Wilder I believe.

Q. Had you heard about his making an affidavit over there?

A. Yes sir.

Q. Did you have and conversation with Daniel Justus at that time concerning that trip and affidavit, if so state what it was?

Objected to by defendant King.

A. I had a conversation with Daniel Justus in regard to his trip and his affidavit. He asked me if had heard what he had done and I told him I *dident* know I supposed I had. I told him I understood he had swore them corner trees *wasent* marked. And he said he swore it. I asked him why he did swear it and he said they had agreed to give him $500,00 and had paid him $100,00 of it down and that they had agreed to *ley* his *mothr* and his brethers all out of the suit and release their land. I told him told him you know they wont do it and he said he had a written contract and if I would go down with *im* to the Race Fork he would show it to me. We went on down from there to the Race Fork together and he called Riley Lester out and got the contract and showed it to me. He asked me what to do with the contract. I told him to call Gaujot out and Tom Felt and see what they wanted to do with it. He called them out and he showed the contract to them. They told him they wanted him to bring the contract down here and put it in evidence and they wanted him to come too and if the statement he had made to Sheppard and Campbell was true they wanted him to come and swear it and he said it was true and he would swear it and was ready to start then.

page 339.] Defendant King moves to strike out all the alleged conversation between the witness and Daniel Justus.

Q. When you first saw Daniel Justus on that occasion did he say anything to you in reply to anything you said to him in-

dicating that he had sworn falsely in his affidavit, if so what was it?

Objected to by the defendant King.

A. Well I asked him about making this affidavit. Daniel I said you *dident* swear a lie about it. He stuck one hand up and said "John *i'll* be God Damed if I *dident belcher*".

Q. Do you know anything about any arrangement made with W. W. Baldwin and surveyor Raines and S. A. D. Baldwin or either of them by Henry C. King or his agents to do any surveying on Knox Creek and make a map thereof if so from whom did you get that information?

A. W. W. Baldwin told me that he had been hired by Wilder and Stiles to make a map of Knox Creek and to show their—the King survey and to show each mans land on the map. He said he give them five dollars a *fay* for their work.

Q. Do you remember about the occasion when W. W. Baldwin and S. A. D. Baldwin were said to have gone to Wayne Court House for the defendant King and given testimony before the present commissioner?

A. Yes sir I remember about them going away from Grundy and I understood that is where they went.

Q. When with reference to *thrir* going away from Grundy *fid* W W. Baldwin give you this information?

A. It was some time after that. and after he had been over to Knox trying to survey.

Q. Who was assisting him in that neighborhood?

A. Well I understood that Sennet Justus and Morgan Justus and Isaiah Lane had been helping them. Lane said that they told him they were *surv* surveying for the people had he of *know* that they were surveying for King he *wouldent* of went.

Q. What other surveyor, if any, was assisting
page 340.] W. W. Baldwin.

A. J. C. Rains told me that he assisted him.

CROSS EXAMINATION

By Judge Stiles.

Q. Sennet Justus was pardoned out of the penitentiary before the expiration if his sentence shown in the record you have filed was he not

A. He *dident* serve his time out—three years out. I *dont* remember how the pardon was whether it was conditioned *at* not.

Q. The fact is tha he was a young boy at the time of the alleged offense and that he did not in fact steal the horse, that he was away from home and crippled up with his feet and was found to have led the horse up by the fence to get on him with a view to riding *hi* a piece and did get on him and that is as far as the alleged offense if it was one had proceeded?

A. My recollection is the way the proof was in the case he had went into the mans porch and stole the brilde and went into the pasture and stole the horse and got to the fence and got the fence down and the man *cought* him. He was away from home though and was coming home.

Q. Did you ever accompany W. D. Sell in running any of the lines of the Morris grant in Virginia, if so between what points?

A. I went with W. D. Sell to the mouth of the White Oak branch on Knox. We run a line *a line* west, is my recollection from there to the Paw Paw Fork of Knox. That was in 1894 or 5 I believe.

Q. He was surveying under an order of the court in the case of King against Joshua Justus and others, was he not?

A. Yes sir.

Q. You were one of the defendants in that suit?

A. Yes sir.

Q. That suit was tried as to J. N. Watkins and S. A. D. *Batdwinn* at Adingdon in 1899 *wasent* it?

A. Yes sir I think that suit was tried in 1899.

page 341.] Q. Were you present during that trial

A. Yes sir I was present.

Q. Did you assist the other defendants in securing the witness and otherwise looking after the case?

A. Well I gave them the names of some witnesses I thought would be material for the defendants.

Q. Did you testify in the case yourself?—A. Yes sir.

A. In relation to what matter?

A. In relation to who it was lived on a 400 acre survey patented in the name of Daniel B. Coleman.

Q. Was the question of the location of the Morris grant the principal controversy on that trial?

A. Well it seems to me the question was to some extent the question of boundary also the question of adverse possession, it seemed to be both questions.

Q. The defendants contended that the southwest corner of the grant should be located near the *had* of Race Fork at a point designated on the map by the letter Q2, which was west or south 86 west allowing variations from four white oaks on Knox, did they not?

A. There was a good deal said about the line being established and beginning at the point Q2, on Sells map but I *dont* remember anything being said about the 4 degrees variation being put on that west line.

Q. Was any evidence given or offered by any one upon the trial of that case with reference to marked timber or timber of any kind as corner trees for the south-west corner of the Morris tract?

A. No sir if there was I *dont* remember it.

Q. Do you remember how long the trial lasted?

A. No sir I do not remember.

Q. Was it not about three weeks?

A. I think it was something about three weeks the trial lasted.

Q. You are still an adverse claimant of land in controversy with Mr. King and Colonel Wilder?

page 342.] Q. I am holding some land that Mr. Wilder is claiming.

Q. The land you claim is west of the mouth of Guesses Fork and west of the mouth of Turkey Creek in whole or in part is it not?

A. It is in part.

Q. You have made several efforts without success to compromise the conflicting claims of title between yourself on one hand and Mr. King and Colonel on the other, have you not?

A. I have said something to Colonel Wilder about compromising but I *dont* think I made him any offer.

Q. When you were doing the survey with Sell did you tell him about any marked timber in the neighborhood of the head of Race Fork or along that line?

A. No sir I did not he *dident* seem to be hunting for any marked timber on Race Fork, he seemed to be hunting for marked timber on Paw-Paw.

Q. If you go, up the Hurricane fork past the Estep poplar corner on the same side of the fork as the corner how many marks would you see on that poplar *causually* passing by?

A. I believe the poplar is marked on about four sides of it, there are a good many marks on that poplar.

Q. Is it not marked with three hacks on the side towards the fork or branch, six hacks on the side facing up the branch, three of which marks are very plain and three not very plain, the other marks being on the back side of the tree towards the hill where they would not be observed by a person passing the tree either going up or down the creek unless he *purposly* he *climed* up back of the tree on the hill side, the tree being marked only on three sides?

A. I am not positive that it is marked on four sides but I think it is. I think it is marked with six hacks facing up the Hurricane Fork and I think it is marked with six hacks going down the Race Fork. It seems to me there are some hacks about it on other places also. There was a little path that

went on the upper side of the tree along up on top of the knoll there. Along back in that flat there I remember
page 343.] of seeing where there were some parties camping who had been *sanging*. There was was a camping place there.

Q. You remember when I was taking depositions with Major Henry at Grundy at the lest term of the Circuit Court?

A. Yes sir.

Q. Rather it was Major who was taking the depositions was it not?

A. Yes sir I think it was.

Q. They related to the question of possession of certain lands on Guesses Fork, *dident* they?

A. I *dont* think I heard a witness testify and I *dident* see the depositions.

Q. Do you know that there were a number of Guess Fork people there to testify?

A. Yes sir there was some parties from Guesses Fork and some from Knox and Lesters Forks to testify.

Q. Did you learn that the depositions broke down because it was necessary to do some surveying before proceeding *frther?*

A. Yes sir I understood they had stopped taking depositions until they had done some surveying?

Q. The depositions and surveying were for the purposes of a suit in the United States Court in Virginia, were they not?

A. That was *myn* understanding.

Q. Did you learn from W. W. Baldwin, your county surveyor, or otherwise, that upon the suspension of the depositions and before leaving Grundy I engaged him to do some surveying of the creeks and platting of the lands claimed by the Guess Fork defendants?

A. I learned from Baldwin since he went over there to do some surveying that you had employed him to do some surveying. that is that you *dident* close the contract until he went down to

Wayne Court House. He told me you paid him $25.00 on it when he went to Wayne.

Q. You mean to say that you learned from him that I dident close the contract until he went to Wayne page 344.] Court House?

A. Yes sir that is exactly what he said.

Q. Do you regard $5.00 a day as an extravagant or unusual price for the work required to be done?

A. No sir I *dont*.

Q. Are you aware of the fact that I had given notice to Mr. Campbell or some of the other counsel in this case before going to Grundy and before seeing Mr. Galdwin that I would take his deposition while at Grundy before the Clerk of the Circuit Court?

A. No sir I *dident* know anything of it nor *dont* know anything of it *yt*.

Q. If Major Henry had taken all the depositions he first expected to take would it not have consumed that week?

A. If he had taken all the witnesses that had come there it would have taken all that week.

Q. You know that I left there the day that Henry suspended depositions?

A. I am not positive but think you left on that day.

RE DIRECT EXAMINATION

Q. What creek or *barnch* lies across the hill from the hollow where Dan Justus now lives, towards Paw-Paw?

A. It is Jim Fork of Abners Fork.

RE CROSS EXAMINATION.

Q. You could start from somewhat above Dan Justus' or some what below and go to Jim Fork *couldent* you

A. You *couldent* go very far above Daniel Justuses and hit the Jim Fork you would hit the Low Gap Fork and if you went far below it you would hit the Bear Wallow Fork of Race.

Q. *Couldent* you go up the Low Gap Fork and hit the Jim Fork.

A. By going down the ridge you could.

And further this deponent saith not.

JOHN C. McCOY.

3 days and 112 miles.

page 345.] Pursuant to agreement between the parties, met at Matewan, Mingo County, West Virginia, this the 13. day of November 1902.

PRESENT. The same attorneys as on yesterday.

F. A. J. FERRELL, a witness introduced by the contesting defendants after being first duly sworn upon oath testified as follows.

EXAMINED

By Mr. Campbell.

Q. State your age, residence and occupation.

A. Age 72 years past, I live at Matewan and am a farmer.

Q. Where were you born and reared?

A. I was born at the mouth of what we call Thacker and pretty much raised there.

Q. Did you continue at the mouth of Thacker until after you were married?

A. Yes sir.

Q. What was your father's name?

A. John Ferrell.

Q. Where was he living at your *earlies* recollection?

A. Right at the mouth of Thacker.

Q. How long did he continue to live there?

A. Well sir he must have lived there some forty to forty-five years from my first recollection until he left there.

Q. If your father or mother ever informed you the date you

may state when your father first moved to the mouth of Thacker?

A. They must have been there two or three years before I was born.

Q. Did you ever know Ruben Thacker who is said to have at an early date lived on Thacker Creeks?

A. No sir.

Q. Did any person by the name of *Reuben* Thacker aver to your knowledge live at the mouth of Thacker or at any other point upon Thacker Creek.

A. My parents told me there was. I never of my own knowledge knew of his living there.

page 346.] Q. Name the old settlers with whom you have acquainted who are now dead and who in their life time lived on Tug River in the neighborhood of Thacker Creek, for some miles above and below?

A. There was old Mr. Daniels, Davy Mounts, Peter Cline, old uncle Ferrel Evans, my grand father John Ferrel, Joseph Hatfield, old uncle Richard Ferrel, old uncle Jake Philips, old uncle Sammy McCoy.

Q. Are these men now dead?

A. Yes sir as far as I know *ever* one of them.

Q. Where did your grandfather John Ferrel live.

A. Out here about half a mile at the mouth of a little creek we call Sulphur Creek, about three miles and a half from Thacker Creek and about a half a mile above the mouth of Mate Creek.

Q. About what aged man was your grand father when he died and how long has he been dead?

A. He must have been close up in seventy years when he died and he has been dead close on to sixty years.

Q. When if you know by information did your grand father first settle in this country on Tug River?

A. It must have been at the least ninety years ago.

Q. When you were a boy and a young man did you visit the

home of the old men whose names you have mentioned and did they visit your fathers fireside?

A. Oh yes greatly, more so than they do now a days.

Q. Did you ever hear these old men talk about the settlement of the country, the names of creeks and localities and their hunting experiences

A. To a great extent, yes.

Q. Did you know old man Valentine Hatfield?

A. Yes sir I have saw him many a time.

Q. Did you ever hear him talk about the settlement of the country and history of the settlements?

A. I dont know that I could answer that correctly, he moved away before I got up much of a size.

Q. Was there any history or tradition or report among the old people you have named and the other settlers of
page 347.] the country that Thacker Creek was once called Turkey Creek?

A. Never through *hire* to the best of my knowledge, in no shape until this trouble got up.

Q. What do you refer to the King suit in your last answer?

A. Yes sir I do.

Q. Are you acquainted with Blackberry Creek on Tug River?

A. Yes sir I think I am.

Q. Does it enter from the Kentucky or West Virginia side?

A. Kentucky.

Q. How far below the mouth of Thacker does it enter the river?

A. About three miles as well as I can give it in.

Q. Have you heard how Gilberts Creek of Guyandotte River, acquired the name of Gilbert, if so how early in life did you hear it?

A. I dont know that I could give any correct statement on that.

Q. Did you ever hear the story about the indians killing a man by the name of Gilbert on Gilbert Creek?

A. Yes sir I had heard that spoken of frequently.

Q. Did you hear that before you were a grown man?

A. I think I did sir, I do.

CROSS EXAMINATION.

By Judge Stiles.

Q. About how long ago did you hear that story?

A. Well it seems to me it was as long as fifty or sixty years.

Q. Did you ever *gear* before the King suits were brought that Gilbert Creek had ever been called by any other name?

A. No sir never, never.

Q. Do you know how Thacker Creek came to be so called?

A. By some old man a living there was my understanding, by that name.

Q. Did you ever hear that Island Creek had ever been called by any one by any other name than Island?

A. No sir never in life.

Q. If your grandfather died sixty years ago you were about 12 years old at that time?

page 348.] A. Yes sir right close there.

Q. Did you live at the house of your grand father or at your fathers house up to that time?

A. I lived at my father's house.

And further this deponent saith not.

F. A. J. FERRELL

1 day.

HENDERSON VARNEY, a witness introduced by the contesting defendants, after being first duly sworn upon oath testified as follows.

EXAMINED

By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age 75 at my next birthday. I live on Mate Creek, Mingo County, and am a faarmer

Q. Have you spent all your life in this part of the country?

A. Yes sir, principally all the time.

Q. Did you know th old settlers who were now dead and gone?

A. Yes sir a great many of them.

Q. Did you know Valentine Hatfield?

A. Yes sir, he was my wifes grand father.

Q. In growing up were you with these old people and your other neighbors *theorgh* the country and did you hear them talk about the settlement of the country?

A. Yes sir a good deal.

Q. Was there any tradition among those old people, or prevailing in the country, that Thacker Creek was once called Turkey Creek?

A. No sir not to my knowledge.

Q. Did you in your early days hear the story from these old people about the indians killiag a man by the name of Gilbert on Gilbert Creek?

A. Yes sir.

CROSS EXAMINATION.

By Judge Stiles.

Q. Did you ever hear that Gilbert or Island Creek or any of the other creeks along Tug and Guyandotte Rivers had
page 349.] been known by names different than these they now bear?

A. No sir not to my knowing my father came to that country when he was small and he said it was called Island Creek when he come there first.

And further this deponent saith not.

his

HENDERSON x VARNEY

mark

1 day.

page 350.] ISABEL RUTHERFORD, a witness introduced by the contesting defendants, after being first duly sworn upon oath testified as follows.

EXAMINED

By Mr. Campbell.

Q. State your age, residence

A. I am 75 years old, I live at Matewan, Mingo County.

Q. Where were you born and reared?

A. I was born I reckon in Kentucky but I was raised here in West Virginia, right close around here.

Q. Have you lived on Tug River in this part of the country all your life

A. Yes sir.

Q. What was your father's name?

A. John Murphy.

Q. What was your husbands name?

A. Elliott Rutherford?

Q. What year were you married to him?

A. I don't remember the year.

Q. Was your husband a physician and did he practice medicine throughout this country?

A. Yes sir.

Q. Was he also a merchant selling goods and buying country produce?

A. Yes sir.

Q. How long has he been dead?

A. Four years the 27th. of last May.

Q. Were you acquainted in your early days with preacher John Ferrell and preacher William Collins and other old settlers on Tug River above and below Thacker Creek?

A. Yes sir.

Q. Did you visit their homes?

A. Yes sir I have been at old uncle John Ferrell's a heap of times and a *Cillins* to.

Q. Have you heard both of them preach many times?

A. Yes sir.

page 351.] Q. Did those old people both men and women visit your fathers house and also your own home after you were married?

A. Yes sir.

Q. Did you ever hear them talk about the early settlers of the country and where certain families settled and on what creeks and in what neighborhoods?

A. I may have heard all that but I cant recollect such as that now.

Q. Was there any tradition or report in the country when you were growing up or after you were married to the effect that Thacker Creek was once called Turkey Creek?

A. No sir I never heard it.

CROSS EXAMINATION.

By Judge Stiles.

Q. Did you ever hear of any Turkey Creek and where along this neighborhood?

A. They say there is one down here below the mouth of Pond a piece but I dont know how far, it is on the Kentucky side.

Q. Did you ever hear of any creek along this neighborhood that ever used to be called Turkey Creek at any time and that is now called by some other name

A. No sir I dont know that I have.

Q. Do you remember of ever having heard that Sycamore Creek down below here was once called Turkey Creek?

A. No sir I dont remember nothing about that.

Q. Do you know a creek on Guyandotte River that is called Gilbert Creek?

A. I have heard talk of it.

Q. Did you ever hear talk of its ever having been called by any other name?

A. No sir I dont know that I ever heard any other name for it.

Q. Did you ever hear of any of the creeks in this neighborhood or in what was formerly Logan County, ever having been called by names different from their present names?

page 352.] A. I dont remember that I do.

Q. You didnt pay much attention to such matters when you were young, did you?

A. Oh I might not, a great many young people never pays much attention to such as that.

Q. Was your husband, Mr. Rutherford, ever called upon to testify in behalf of the people in any of the King cases? during his life time?

A. If he ever was I never heard him speak of it.

Q. Where did preacher Collins live during your *acquaintence* with him?

A. At the mouth of Ben Creek

Q. How far was that from where you lived?

A. I reckon it was about fifteen miles

Q. Do you know or have you heard in your early days how Thacker Creek came to be called Thacker?

A. Why it was from an old man living there by the name of Ruben Thacker.

And further this deponent saith not.

her
ISABELL x RUTHERFORD
mark

I day and

page 353.] Met at Devon, Mingo County, West Virginia, this the 14th. day of November 1902, pursuant to *adgreement* between the parties and adjourned on yesterday.

Present the same attorneys as on yesterday.

No witnesses appearing the *proceedings* were continued until to morrow morning.

J. T. GRAHAM,
Commissioner.

Saturday November 15th. 1902. Met at Devon, pursuant to adjournment on yesterday. Present the same attorneys as on yesterday

JOHN HARRISON LESTER, a witness heretofore introduced by the contesting defendants, being recalled, after being re-sworn upon oath testified as follows.

EXAMINED
By Mr. Campbell.

Q. Do you remember staying all night at the house of Daniel Justus on or about the 24th. day of April, last when surveyors Stone and Reynolds spent the night there?

A. Yes sir.

Q. At what time of night did Daniel Justus return to his home on that occasion?

A. About 12 or 1 o'clock.

Q. About how long had he been gone from home?

A. About five days, four or five.

Q. Where had he been?

A. He told us he was going to the doctor, Mr. Hatfield, or Mr. Burgess one.

Defendant King moves to strike out the answer.

Q. Did he tell you that *before* he left home?.

A. Yes sir.

Q. Where did the doctor he said he was going to see live?

A. I dont know just exactly where he lived, at Welch or Matewan.

Q. Did Daniel Justus have any conversation with you the morning after you spent the night at *his* house if so state what it was?

Objected to by the defendant King.

[page 354.] A. Yes sir. Him and myself Mr. Reynolds and Mr. Stone and also I believe my father went up to the stumps that is so said to be the corner stumps, we came back down part of the way to the house, Mr. Reynolds and Mr. Stone and

Daniel Justus stopped and talked awhile. Mr. Reynolds, he came down to the house, and left Daniel and Mr. Stone up there. After while they came down to the house and Daniel said for me and him and his wife to go down below the house and take a talk and we went down and set down. He says "John he says this thing has come to a point it has to be *swore* to and that it *wouldent* do for to swear to them corners for he made them *them* all they ever was there." His wife says "Daniel you know you *dident* mark that beech tree for it looked older than you did. He *say* "I dont claim that I marked it that it were already marked." He said that it was all fixed up with him and Mr. Charles, Mr. Sheppard, Mr. Campbell and Mr. Gaujot for a standing point for a law suit to try to beat the Wilders out. I says to him "Daniel you know it *wasent* any fix up with me." He says no we *dident* say anything to you about. I told him that if it was a fix up that it *dident* make any difference with me I would state what I say. He says "Now John you know you have been sick a long time and has to die and it wont do to swear to them trees." I told him I would *swore* to what I *seed*. He said that there certain were no corners there only what he made.

Q. Did he have another conversation with you later on, if so state when and where it was and who was present, if any one?

Objected to by the defendant King.

A. Yes sir. He had a conversation with me at Hurley, Buchannan, last May some time, my brother W. A. Lester was present and also I *thing* Adam Justus was present I wont be certain. He said when the right time come that I had been sick a long time, *wasent* able to work, and he was going to give me $50.00, then said that he would fix for me to get $50.00 when the right time come, showed us the money he had and said how easy he was making it, a right smart amount a day—some $20.00 or $25.00 I wont state just how much his amount was. He also said that
page 355.] he had bought *chickens*—was having a good supper fixed down about a half a mile below Hurley; wanted us to go down and take supper with him. I understood after-

wards that a lot of Mr. King's men was to meet him there that night I *didenl* go—I had to go *hime* and *couldent* go with him.

Q. Was that before you went to Williamson, about the 7th. of May last and testified in this case?

A. I *cant* state for certain whether it was before or after but it bears on my mind it was before.

Q. Had Daniel Justice been talking about the King suit before speaking of his purpose to give you $50.00 at the right time?

A. Yes sir.

Defendant King moves to strike all the testimony of the witness more especially the alleged conversation between himself and all the other persons referred to, and all alleged statements of the other persons mentioned.

CROSS-EXAMINATION

By Judge Stiles.

Q. What "Kings men" did you hear met or were to meet Daniel Justus on the occasion last referred to by you?

A. Mr. Dixen and Watkins Blankenship and some more parties I dont know that I can state just who they was—that was my understanding.

Q. How did you get that understanding?

A. They was more parties that seed them come through? my understanding was then that they sent for Daniel Justus to come down to Mr. Harve Charles.

Q. Who told you that?

A. Well Mr. Josh Justus and a good many people talking I *couldent* state who all they was.

Q. Did you ever have any conversation or communication with Mr. King or Colonel Wilder, or Mr. Dixon or *Myself?* in all your life time before you went on the witness stand?

A. No sir I never had any conversation at all with either one of those men you have spoken of that I know of.

page 356.] Q. Did ever any one professing to represent Mr. King ever offer you anything whatever if you would testify or not testify about any matter in this case?

A. No sir, Daniel Justus wife though, came to our house and said if I *wouldent* give any further affidavit or take in any more witnesses that we should have our land released. That was along last—I would say whether it was in the latter part of the summer or the first of the fall. I *couldent* state whether it was before she had been to Williamson to testify or after.

Q. Was it after you had testified?

A. Yes sir.

Q. Were you expecting or was it understood that you would testify again in the case?

A. No sir it *wasent* understood at that time.

Q. Had you at that time any idea of giving any further testimony in this case?

A. I *dident* know whether I was or not. I *dident* know what I might do. There *wernt* anything said that *that* time about me a giving any further affidavit till in some time of the last of last month.

Q. You *ant* your father had met Colonel Wilder and myself a number of times and Mr. Dixon after your first testimony was given?

A. I have *seed* them once *a piece* till I went down to Williamson the other day, and I see Mr. Colonel Wilder I reckon it is Judge Stiles here now. I met Mr. Dixon at one time on the Race Fork of Knox Creek or who they said was Mr. Dixon.

Q. Mr. Dixon was going with some men to look at the stumps, was he not?

A. He was coming out of Daniel Justus gate when I first *seed* him, with Grayson Stacy and Judge Counts, who they said he was, Watkins Glankenship and there was a couple of more men with them.

Q. Did Colonel Wilder Mr. Dixon or I at any of the time mentioned or at any other time mention such thing to you as

releasing any land to you on any terms whatever or refer to land in any way?

A. No sir.

page 357.] Q. Has either of us ever had any conversation with you of any kind upon any subject whatever?

A. No sir.

Q. Do you know or have you heard that your father Levi Lester has applied to me since you testified before to have your land released that is the land you claim?

A. Yes sir. I wont state that he said he referred to you about having any land released. He said that he had a talk with Mr. Judge Stiles at Welch. I think it was. I wont state for certain, and he told Mr. Stiles that he would make a fair contract with him. He would let him set and take depositions at his house and he *wouldent* have any lawyer at all and if he said when he taken the proof if he had any land that he could hold he was willing to give it to him.

Q. Did he tell you that I even so much as hinted that you or he should do or abstain from doing anything whatever with reference to this case?

A. I dont remember as he did. He said that Mr. Stiles said he was willing to anything that was fair, that he had made him a fair contract.

Q. With reference to the land that you had purchased and claim and occupy and which he wanted to have released, did he tell you that I told him that we never had driven a man off land that he was occupying and we never expected to do so and that although we had received the land where you were by judgment that while I was not to be understood as making any promise or proposition you probably would be permitted to stay there *ulatize* what you needed for farming or something to that effect?

A. Mr. Stiles was mistaken I guess as to the man he was talking to, as I dont know of their having any judgment against my land, that probably applies to my brother Riley Lester. My father told me that Mr. Stiles said that he never had driven any one off.

Q. Is Daniel Justus generally regarded among your people as a good deal of a blow hard?

A. Yes sir he is.

And further this deponent saith not.

1 day and 28 miles.

J. H. LESTER.

page 358.] CURTIS LESTER a witness introduced by the contesting defendants after being first duly sworn upon oath testified as follows.

EXAMINED

By Mr. Campbell

Q. State your age, residence and occupation?

A. Age, I reckon I am growing on 27 years. I live on the Paw-Paw Fork of Knox Creek. I have no occupation now but farm.

Q. Do you know where Daniel Justus first built a little hut on the right Fork of the Race Fork of Knox Creek and lived there for a short time

A. Yes I know where he first built there. I *havent* been there since he moved.

Q. Do you remember the little drain or hollow coming into the creek on the right hand side as you go up a short distance Above where Daniel first built and lived.

A. Yes sir.

Q. Did you ever camp at the mouth of that hollow with your father while digging *sang* in that section?

A. I camped something near the mouth of the hollow but I dont remember just exactly at what place.

Q. State as near as you can how long ago that has been?

A. That is something I dont know whether I could or not it has been so long.

Q. Was it before you were married?

A. Yes sir.

Q. How long have you been married?

A. About ten years I guess.

Q. About how long was it before you were married?

A. I dont know I was about sixteen or seventeen or eighteen years old.

Q. Do you know how corner trees are hacked?

A. Yes sir.

Q. State if on that *occassion* while camping at or near the mouth of that hollow your attention was called to any marked timber standing in that hollow if so who called your attention to it, and what kind of timber it was?

page 359.] A. Calve Lester my Pa, showed me a marked sugar tree and a poplar and said it was a corner, they were marked like corner trees are marked now

Defeadant King moves to strike out the answer.

Q. Did you see the poplar and sugar tree and the marks on them?

A. Yes sir.

Q. About how far up in the hollow from the Race Fork did they stand?

A. That is what I *couldent* tell you but it *wasent* far up in the hollow if I aint mistaken.

Q. Do you remember how close they stood to the little drain or branch coming down from the hill?

A. No sir I dont remember how close they stood to the branch.

Q. Do you remember whether they were on the right or left hand side of the branch going up?

A. No sir I dont it has been so long.

Q. Do you remember how close the sugar and poplar tree stood together?

A. No sir, I dont think they was far apart but dont remember how far they was.

CROSS EXAMINATION

by Judge Stiles.

A. Was there any one living in the immediate neighborhood of the hollow where you saw marked trees at the time you saw them?

A. *Nor* sir not in the hollow that they was in.

Q. Was the hollow or any part of it where these trees were cleared?

A. No sir not then it *wasent*.

Q. How near was the nearest clearing, to where you saw these trees?

A. I don't know exactly that I can tell you.

Q. Have you ever been back to these trees since the first time you saw them?

A. No sir I dont know that I have been back to the trees I might have been back in the mountain near there *sanging*.

Q Was your attention ever called to them or did you ever think anything about those particular trees afterwards un-

page 360.] til within a few months past.

A. No sir I never thought they was anything more than a marked tree until some time ago when I heard them talking about it.

Q. Did you ever think of them then or afterwards with a view to fixing in your mind *there* particular locality?

A. No sir I never did.

Q. It is not an uncommon thing to run across trees that have hack marks on them along creeks, trails or hollows is it?

A. No sir it is not.

Q. Do you remember anything especial or peculiar about the hollow where you saw the trees that you noticed at the time that would distinguish the hollow where you saw the trees from any other hollow along the mountains on that creek in that neighborhood

A. I noticed the hollow if I aint *mistake* just below it is what we call the low Gap Fork where we laid out and *sanged*.

Q. How many times have you been down the right hand fork of the Race Fork since you were *sanging* there then, that is about how often?

A. I dont know but I have been down there some several times though up and down the creek.

And further this deponent saith not.

CURTIS LESTER.

1 day and 28 miles.

page 361.] Met this the 20th. day of November at the office of the commissioner in the city of Huntington, West Virginia, pursuant to adjournment, and by agreement between the *paties*.

PRESENt. Counsel for the contesting defendants Judge Stiles, attorney for the defendant H. C. King.

SAMUEL W. McINTURFF, a witness introduced by the contesting defendants, after being first duly sworn, upon oath testified as follows.

EXAMINED

By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age 47 years, residence Hurley, Knox Creek, Buchannan County Virginia, and have been engaged in the timber business.

Q. How long have you been engaged in the timber business and state whether during that time you have been cutting the timber in the forests and hauling it out to water?

A. I have been engaged about 15 years, I have been duriag that time been engaged ia cutting in the forest and hauling to water.

Q. Do you know the different kinds of wood that is usually found in the Knox Creek forest, such as oak poplar, and sugar trees

A. Yes sir I am acquainted with all the different kinds of timber that grow in that country.

Q. How long have you lived at the mouth of the Race Fork of Knox Creek?

A. I have lived there two different times—I moved there in 1888 and lived there about three years at that time and I moved back there in 1899 and have lived there ever since.

Q. Do you know where Daniel Justus lives on the Right Fork of the Race Fork of Knox Creek?

A. Yes sir.

Q. How long have you been acquainted with that place and the hollow back of his house.

page 362.] Q. I have been acquainted on that creek for about ten years—that is up that far on the creek.

Q. Do you know where there are certain poplar stumps about 508 feet from the Race Fork upon the left hand side of the little drain that comes near Daniel Justus' house, which are claimed to be stumps of certain marked poplar trees?

A. Yes sir I know of the stumps.

Q. Did you ever have pointed out to you the place where it is said that a sugar tree formerly stood not far from the *poplar* stumps and close to the remains of a lynn stump.

Q. Yes sir.

Q. Did you ever dig down in the ground at that place, if so state when and who was with you?

A. Yes sir I dug beside of the lynn stump on the 31st. of May 1902; Mr. C. L. Gaujot, and my wife and Mrs. Justus, wife of Daniel Justus, were with me. Mrs. Justus pointed out the place where the sugar tree should have growed by the side of the lynn stump.

Q. Were there any measurements taken by Mr. Gaujot at that time of the distance of this place of examination to either or both of the poplar stumps?

A. Yes sir the measurement to each of the stumps and the distance of the stumps from each other—the distance of one stump from the other.

Q. With what kind of an instrument did you do the digging?

A. I only dug with my hands.

Q. State what you found *that* that place?

A. I found sugar tree roots and pieces of roots.

Q. Have you with you any of the roots taken out of that place?

A. Yes sir I have some of them.

Q. Please file them with the commissioner?

A. I here tender to the commissioner the said roots and file the same with my depositions hereia.

page 363.] Q. How many pieces or portions of sugar roots did you dig up at that place and at that time?

A. Well I *couldent* say the exact number—some several pieces?

Q. Please state to the commissioner your opinion as to whether those sugar tree roots taken out by you at that time and place were taken from their natural bed where they had growa or not?

Objected to by the defendant King.

Q. My best opinion is they had grown there.

Q. Did you see any evidence at that place that those roots or any of them had been placed there by some one?

A. No sir I did not.

Q. What was done with the portions of the roots you did not bring away with you?

A. They was left there on the ground where they was found.

Q. Was the ground at that place planted and cultivated in corn at that time?

A. Yes sir.

Q. Did you notice any place near by where you dug down having the *appearence* of the digging of some person else a short time previous?

A. No sir not at that time.

Q. Had there been any digging at or near the place where you dug a short time previous by any one else?

A. There was none dug there at that time that I know of, the ground was plowed up and planted, there was some digging there afterwards.

Q. How *long* afterwards and at what point with reference to the place where you *gau* dug?

A. I doat know the exact time afterwards, the place was about twenty feet I suppose from where I dug. It was about fifteen feet from the poplar stump nearest to the branch.

Q. Had the corn at that place been plowed in the meantime?

A. No sir I dont think it had.

page 364.] Q. Before you commenced to do your digging near the lynn stump as spoken of was there any sugar roots lying exposed on the surface of the ground at that place?

A. Yes sir there was some roots on top of the ground—small pieces.

Q. Do you know where there is a depression in the ground about fifteen or sixteen feet from the lower or poplar stump some what below that stump?

A. Yes sir there is a depression there, down the branch from the stump about fifteen feet.

Q. Where was the digging you saw with reference to that depression?

A. It was near the depression *the depression;* it was dug around on the ridge of the depression.

Q. Were you at that same place when surveyor W. C. Reddy was doing certain surveying and examining the stumps and their surroundings

A. Yes sir I was present while he was examining the stumps.

Q. Were you present at the location of the alleged sugar tree while Mr. Reddy, Mr. Sheppard and Levi Lester were examining some roots?

A. Yes sir I was present.

Q. How close were you to that location while he was making his examination of the roots?

A. I was near enough that I was examining the roots at the same time with him.

Q. Was there any pile of chunks of sugar tree roots *containg* a peck or more in the depression where it is said the sugar tree grew and which pile was partially covered up?

A. No *sor* there was some several roots but they were scattered among the loose dirt as the ground had been cultivated in corn

and plowed up loose and the roots had been scattered, there was no pile at all.

page 365.] Q. Did you see at that time and place any appearances or evidence that those roots which you saw there and which Mr. Reddy examined had been brought there from some other place?

A. The *appearence* of the roots was as if they had been plowed up in cultivating the ground, from underneath.

Q. Do you remember where C. W. Campbell was standing at the time Mr. Reddy was examining these roots, if so state?

A. I *couldent* state the exact place where he was standing at that time?

Q. Did Daniel Justus or any other person bring those sugar tree roots which Mr. Reddy examined, or those that were scattered around in the plowed ground from some other locality or did you or any other person to your knowledge bring them there from some other place?

A. I did not bring them nor doat know of any one else bringing them.

Q. What kind of timber principally have you been handling for the past fifteen years?

A. Principally poplar timber.

Q. Did you ever examine the lower poplar stump and the poplar log lying in the drain below and about fifty-five feet away with a view of determining whether that log came from that stump?

A. Yes sir I examined the stump and the two logs that lay in the hollow near the stump.

Q. What is your opinion on that question, as to whether those logs or either of them came off of the lower poplar stump?

A. My best impression is they *dident* come off of the stump. I have two reasons for believing they *dident* come from the stump.

Q. State those reasons.

A. First the grain of the wood in the stump seems to be nearly straight, while in the logs the grain of the wood is twisting it runs around the logs. Second the two logs in the branch both seem to

have come from the same tree from the grain of the wood and the two logs lay side by side in the branch and they are opposite the stump and I dont see how the top log could get back up in the branch unless it was hauled there. I think the top
page 366.]
must have been slipped down from further up the branch as one log is rounded at the end, the way we usually *make* logs to slip them

CROSS EXAMINATION
by Judge Stiles.

Q. Which side of the lynn stump did you dig for sugar tree roots

A. On the lower side or the side next to Dan Justus house.

Q. Would that be the left hand side as you go up the hill to the stump, straight up from the bottom of the hollow?

A. It would be the left hand side as you go up from the small drain.

Q. Did you dig in more than one place?

A. No sir only in the one place.

Q. To what depth below the surface of the ground did you dig?

A. I suppose it was about eight inches.

Q. Over how much surface did you dig?

A. I *couldent* say exactly, it was a very small place perhaps fifteen or eighteen inches or something like that.

Q. When Mr. Reddy was making his examination of that locality did you then dig into the ground yourself?

A. No sir I *dident* dig into the ground at that times.

Q. You merely stood by and looked on.

Q. I picked up some roots from the ground and examined them and perhaps raked a little around on the ground but *didnt* do any digging.

Q. When did you get the roots that you have filed with the commissioner?

A. I got them the 31st. day of May 1902.

Q. Where have they been ever since?

A. The principal part of the time they have been at house in

an iron safe locked up and have been carried in my pocket some.

Q. How did you happen to be up there digging into that stump or around it?

A. Mr. Gaujot was at my place—had been staying up there for some time, he asked myself and wife to ride up to Daniel Justus with him, I told him I *dident* care to ride along if my wife would go and we went up to Daniels together and when we got to Daniels and Mr. Gaujot asked us to go with him to the stumps—said he wanted to take a measurement of them. Mrs. Justus, went up with us to the stumps. Mrs. Justus, in speaking of the trees there where they had been marked, she pointed out this place where the sugar tree stood, she said it grew up right under a large lyan, she said both grew up together nearly; and the reason I examined this place was just for the curiosity of seeing whether there was any sugar tree roots or whether a sugar tree had grown there. I had no thought of being a witness or anything of the kind—but it was only through my own curiosity that I examined for the roots.

[page 367.]

The defendant King here moves to strike out the alleged statement of Mrs. Justus volunteered by the witness as neither competent nor responsive.

Q. Was it as a matter of curiosity that you were at the time Mr. Reddy was there?

A. Well not exactly, with Squire L. G. Stacy on some business and Squire Stacy wanted to come through that way and I wanted to see Reece Davis on some business and I came through with Squire Stacy on account of it being about as near a way home as any, that is how came me to be there.

Q. *How* many times have you been there since August 1901?

A. I have been there three times.

Q. Did you notice at any time that the twist in the grain of the poplar log you speak of is less rapid near the butt than towards the upper end, that the grain twists more at the upper end of the log?

A. No sir the grain seems to be the same at one end of the

log to the other and on both logs that lay side by side, all run the same way.

Q. Is either end of the upper log, that is of the log coming off the upper part of the tree hewed for slipping?

page 368.] A. I dont think it is hewed, it is burnt at one or both ends.

Q. If the tree fell down the hill from the lower stump and the upper end was rolled into the hollow first, would not the but log if rolled afterwards be found between the other log and the stump?

A. If had been slid down the hill the length of itself and then rolled in it would naturally roll by the side of the other log—between it and the stump, on the same side the stump was on

Q. Did you notice that these logs lie below a line drawn straight across the hollow from the lower stump—that is that they lie further down the hollow than the stump is and not above it?

A. They are a little further down than the stump but not far enough for the top log to have been far enough for the tree to have fell and it cut from the other log and then rolled in the hollow.

Q. Are you claiming any land in Buchanan County, adversely to Mr. King?

A. No sir I am not claiming any.

Q. Is your wife?

A. She is not claiming any at this time, she has owned some land there, my wife has.

Q. You were a defendant in an injunction suit were you not for cutting timber on the land claimed by Mr. King?

A. I had a notice served on me at one time for cutting timber on lower Elk Creek.

RE EXAMINATION.

Q. Did Mr. Reddy do any digging at the point where it is said the sugar tree stood?

A. No sir he did not.

RE CROSS EXAMINATION?

Q. What do you mean by digging?

A. It is removing the dirt I suppose and making a hole in the ground.

And further this deponent saith not.

3 days 264 miles.

S. W. McINTURFF.

page 369.] CORA McINTURFF, a witness introduced by the contesting defendants, after being first duly sworn upon oath testified as follows.

EXAMINED
By Mr. Campbell.

Q. What relation do you sustain to Samuel W. McInturff?

A. I am his wife.

Q. Do you remember the occasion when you went with your husband and C. L. Gaujot to certain poplar stumps in the hollow above Dan Justus, on the right Fork of the Race Fork?

A. I do sir.

Q. Did any one go with you up to the stumps from Mr. Justus house if so who?

A. Yes sir, Mrs. Daniel Justus went with us.

Q. Did any person point out a location at or near a certain lynn stump where it is said a sugar tree once grew?

A. Yes sir, Mrs Justice did.

Q. Was there any digging away of the dirt at that point and a search made for sugar tree roots, if so whom and what was the result?

A. My husband and me went to the lynn stump together and de dug away the dirt with our hands hunting for sugar tree roots and found them.

Q. Did you call Mr. Gaujot's attention to these sugar tree roots at that time?

A. Yes sir.

Q. Did he examine them at the same time and place?

A. Yes sir.

Q. How long have you been acquainted with sugar tree wood?

A. Ever since I can remember.

Q. Did you ever tap any sugar trees and make either syrup or maple sugar?

A. I have.

Q. Did you ever help to cultivate new land, that is *land* recently cleared?

page 370.] A. Yes sir.

Q? In hoeing corn in new land have you dug up roots of various kinds from their natural bed where they grew?

A. I have.

Q. Give us your opinion as to whether or not the sugar tree roots that you and your husband dug up near the lynn stump aforesaid, were found by you and him in their natural bed where they grew?

Objected to by Defendant King

A. I think they were in their natural bed.

Q. Did you see any indication or evidence that those roots so found by you and your husband had been brought from some other place and put in the ground there

A. There was no such indication as that to me.

Q. Did you see at or near the lynn stump any evidence that any person else had been digging there recently?

A. Yes sir.

Q. Where was it?

A. It was down the hill below the lynn stump, rather down toward the house of Daniel Justus.

Q. About how far from the place where you and your husband dug near the lynn stump?

A. Well I should judge it would be about thirty five foot below, maybe hardly so far.

Q. Had any person been digging recently at the same place where you and your husband dug down for the sugar tree roots?

A. I think not.

Q. Has Henry C. King ever sued you on account of any land you formerly claimed?

A. He has not.

Q. Were you ever served with any summons of any kind or notice by Heary C. King?

A. I never was.

Q. Do you own or claim any land in the Knox Creek basin

A. I recently owned a thousand acres of land in

page 371.] the Knox Creek basin.

CROSS EXAMINATION

by Judge Stiles.

Q. Did you personally do any of the digging about the lyan stump

A. I did.

Q. How much did you dig and with what?

A. I dug with my hands. I dug out a right smart place in the ground.

And further this deponent saith not.

CORA MCINTURFF.

3 days and 264 miles.

Here Judge Stiles attorney for the defendant Henry C. King tenders and files with the commissioner a copy of a notice which was served on him immediately after the witness Samuel W. McInturff. left the witness stand, which notice is filed and for identification is marked "Samuel W. McInturff."

The contesting defendants objects to the incumbering the record with such paper on the ground that it is wholly immaterial

page 372.] CLAUDE L. GAUJOT, a witness introduced by the contesting defendants, after being first duly sworn, upon oath testified as follows.

EXAMINED

By Mr. Campbell.

Q. State your age residence and occupation?

A. Age 31 years, reside Williamson, West Virginia, and am a civil engineer.

Q. Were you at the two poplar stumps in the hollow back of Dan Justus house on the right fork of the Race Fork of Knox Creek on the 31st. day of May last in company with Mr. and Mrs. McInturff

A. I was.

Q. Was there any examination made for evidence of a sugar tree at a point near a lynn stump where it is said a sugar tree once grew?

A. There was such an examination.

Q. By whom was it made.

A. It was made by Sam McInturff and his wife and myself. Daniel Justus wife was there with us.

Q. Who pointed out the place where it is said the sugar tree formerly stood?

Objected to by the defendant King.

A. I already knew the place and Mrs Justus said it was the right place at that time.

Q. Did you take any measurements of the distance from that place to the poplar stumps?

A. I did.

Q? What was the distance.*XI*

A. I will have to refer to my notes I took at the time. From the first poplar stump, I mean the poplar stump nearest the branch, to where we examined for the sugar tree roots it was 34 feet. I did not measure the distance from the second poplar stump to the sugar tree roots but measured the distance from the *first* poplar stump to the second poplar stump, which was 59 feet.

page 373.] Q. Had there been any digging at the place or in the immediate vicinity where you dug, near the lynn stump.

A. It did not look to me that there had been any immediately

at the lynn stump, but there was some—some digging had been done in another place—down the branch from that point, possibly twenty feet away from it.

Q. Was that digging near a depression in the ground fifteen or sixteen feet from the first poplar stump?

A. There had been some digging in such a place as you mention and also some digging a little closer to the hill from that place.

Q. What did you and Mr. and Mrs. McInturff find where you explored the ground near the lynn stump?

A. We found some *some* sugar and lyan roots, or rather pieces of roots.

Q. Were they found in their natural bed?

A. It looked so to me.

Q. Was there any indication or evidence that the sugar tree roots that you found in the ground at that place had been brought from elsewhere and placed there?

A. There was not.

Q. Was there any evidence that the ground at this point had at any time before been dug up down to or below the *the* point where you found the suger tree roots?

A. There had been a little digging done there but none nearly so deep as the roots were found.

Q. Did you examine the lower poplar stump and the two poplar logs lying in the branch side by side, between fifty and sixty feet distant from that stump with a view of *detwrmining* whether the but cut came from that lower poplar stump, if so state your conclusion.

A. I made such an examination and found some similarity between the break of the tree and the stump but do not think that the but log lying in the hollow came from the stump because the grain of the stump was straight and there was a very

page 374.] pronounced twist in the grain of that but log.

Q. Did you compare the two logs lying there for evidence that the two came from out of the same tree?

A. I did not.

Q. Have you had any experience in land surveying, if so to what extent?

A. I have been surveying and I have had charge of surveys for the last twelve years.

Q. Have you during that time had *occassion* to examine marked corner trees?

A. I have had frequently.

Q. Did you *notice* the size of the two poplar stumps and the heighth at which they had been cut?

A. I did.

Q. How large did you find them to be?

A. The poplar nearest the branch was 34 inches in *diamater* and the other poplar was 36 inches in *diamater* and they were both about four feet in height.

Q. Supposing that the trees which grew on these stumps were marked as corner trees are usually marked on the easterly and northerly sides, would these marks be cut out in felling the tree state if you examined with that view i nmind?

A. I examined the stumps with that in mind and believe they would have been chopped out in chopping down the tree. I want to state further that I know of no set rule for how high the marks should be made, some surveyors mark them low down and others higher up.

Q. Where would a right handed chopper stand to make corner marks on the easterly and northerly sides of these two poplar stumps, that is would he be on as high or higher ground than the stumps *of* on lower ground?

Objected to by the defendant King.

page 375.] A. The most convenient way for him to have made those marks would probably be from the lower side of the tree which would be on lower ground. I mean by the lower side the side nearest to the branch.

Q. Would that fact ordinarily have any effect upon the height of the marks from the ground, upon the tree?

A. It would.

Q. What effect?

A. Marking them from the lower side the marks would be lower on the tree than if marked from the *upper* side, providing he was making his marks in the natural way of chopping.

Q. Do you know Daniel Justus?

A. I do.

Q. When and where was the first time you ever saw him?

A. On Wednesday August the 21st. 1901.

Q. Where?

A. At his front gate near his house on the right hand fork of the Race Fork of Knox Creek, in Buchanan County Virginia.

Q. Who was present at that time and place?

A. John A. Sheppard, C. W. Campbell and Harve Charles.

Q. When was the first time you ever learned that there was such a man as Daniel Justus and the place where he lived?

A. That day, that is I mean the 21st. day of August 1901.

Q. Where were you?

A. I was on the Race Fork of Knox Creek, I believe just a short distance below his house at a sulphur spring where we stopped to eat lunch.

Q. What, if you know, were we preparing to do at the time we first learned that any person lived on that creek above where we ate lunch at the sulphur spring?

A. We were trying to find out at what point on Race Fork of Knox W. D. Sell had crossed in running a line of the Morris survey from the four white oaks, preparatory to mak-

page 376.] ing a careful examination of that part of Knox Creek to find corners of the Morris grant—that is the three poplars and sugar tree corner.

Q. Do you remember whether or not after we ate our lunch we was preparing to turn down the creek when some one enquired if any one lived above there on that fork and then changed our minds on the suggestion of some one that we go up and see him, which suggestion came either from Mr. Sheppard or myself?

A. I dont remember such enquiry having been made but do remember that Harve Charles said that Dan Justus lived above there and that he might be able to tell us where Sell had crossed

and that some one in the party suggested that we go up and see him, probably either Mr. Sheppard or Mr. Campbell because they had the matter in charge.

Q. What occurred when we arrived at his gate?

A. We rode up to his gate, I mean the four of us before mentioned and I believe I was ahead, some of us or one of us called Daniel Justus out to the gate, I believe he was standing somewhere between the gate and the house when we got there,—he came out to us and either Mr. Sheppard or Mr. Campbell, began questioning him without any introduction whatever as to whether he knew or not where Sell had crossed that fork of Race Fork. He seemed reluctant to give us any answer and I finally asked him some questions regarding the same matter and he seemed to get very angry at me and said that he might tell too much. Harve Charles then spoke up and said that he need not be afraid to talk to us that we were not attorneys or agents for King or Wilder, I believe is the way he put it, but said we represented the interests of the people and that gentlemen over there—pointing to Mr. Sheppard was John A. Sheppard from Williamson, who had taken an active part against King in the cases at Abingdon, I believe he said, or possibly he said Virginia. Dan then seemed to become friendly

page 377.] came up and shook hands with Mr. Sheppard and said he was glad to meet him and told us to come in and sit in the house, he said. It was raining slightly at the time and we all went in.

Q. Was there any secret or private conversation or interview with Daniel Justus on the one side and H. G. Charles or any person else on the other side either at the gate or on the way to the house?

A. There not.

Q. Was there *oppostunity* for such secret or private conversation with Daniel Justus.

A. There was not.

Q. Where and by whom were we four, Sheppard, Charles, Campbell and yourself seated on your arrival at the house?

A. On the porch of Daniel Justus house, by Daniel Justus.

Q. Up to the time we were all seated on the porch had there occurred or was there any opportunity for such, any private conversation or interview between Daniel Justus on the one *saide* and H. G. Charles or any of the rest of us on the other?

A. There *couldent* have been any such interview without my knowing it and there was none.

Q. What conversation occurred immediately after we were seated on the porch?

A. I cant state the exact words but it was regarding some corner trees—poplars and a sugar tree which Dan said he and others had cut down, the location of which he pointed to from the porch at that time and which he had mentioned before we came to the house not naming the kind of corners, when he first mentioned them, but stated at the gate, or *betewwn* the gate and the house, that he knew of corners, that is the substance of the conversation.

Q. Up to that time had there been any secret or private interview between Daniel Justus and H. G. Charles?

A. There had not been. I *wnt* to correct my answer to the question previous to the one I just answered. I am not sure whether he mentioned the word "corner trees" between the gate and the house or at the gate, or whether he said he could give us lots of information regarding corner trees, he either page 378.] said that or as I first answered.

Q. How soon after being seated at the porch did Daniel Justus mention the corner and the kind of trees marked?

A. As I recollect it is was almost immediately. I dont think it was over a minute or two.

Q. Up to that time was Daniel Justus and Harve Charles out of our immediate presence from the time we left the gate?

A. They were not.

Q. Did Harve Charles advise or suggest to Daniel Justus that he make any statement to us in reference to the corner, of any description?

A. None other than what he first told him when we first met and that was not to be afraid of us as we were not Kings agents or attorneys.

Q. Did he say how soon he could take us to such corners?

A. I dont remember that he said how soon he could take us but he took us there right at once and pointed them out to us and laid his hands on them and showed how they were marked.

Q. Had there been any suggestion or intimation by any person from the time we first saw Dan Justus at the gate until after he told us the kind of trees which stood up there and were marked as corners, as to what kind of a corner we were in search of?

A. I did not suggest or intimate to him and I dont know that any of the rest did and I dont think they could have done so without my knowing it.

Q. Who went with Daniel Justus up to the stumps the first time and how soon after he had mentioned the fact and kind of trees that were marked?

A. I believe it was John A. Sheppard, Harve Charles and myself, I dont remember whether Mr. Campbell went or not.

Q. To refresh your memory I will ask you if Mr. Sheppard *dident* remain on the porch and *dident* go the first time because of the wet weeds and corn, but did go up with us on the

page 379.] second trip?

A. I dont remember. I only remember that we all *dident* go—one stayed behind I dont remember which.

Q. From the time we first laid eyes on Daniel Justus at his gate till after our first visit to the stumps and returned to his porch were there any map or maps, paper or papers exhibited by any person to or in the presence of Daniel Justus?

A. There was not.

Q. When for the first time was any map or paper taken from our saddle bags or talked about in any way?

A. After we came back from looking at the stumps, my recollection is that we examined on the porch one of Sells maps, I believe, of the King survey and possibly *they* map *accompaning* the Taylor survey of the King survey.

Q. After the first visit up to the stumps and before the second visit, within a short time, on the same day, and after we had returned to the porch, was any inquiry made of Daniel Justus, by

any one, if so by whom, as to whether any person else, besides himself, had seen those trees standing and marked as corners?

A. Yes sir. It was asked by either Mr. Sheppard or Mr. Campbell, I dont remember which.

Q. Who made reply to the inquiry and what did Daniel say?

A. Mrs. Justus, Daniel's wife answered the question, naming some of the *paries* possibly all of them and Daniel told her she must not talk too much.

Q. Had Daniel Justus up to that time been out of the presence of at least three of us?

A. He had not.

Q. Had Daniel Justus and Harve Charles been above the house or behind the house or elsewhere out of the presence of at least three of us?

A. They had not been.

Q. Did you have a *compas* with you when Daniel Justus took us to the stumps?

page 380.] A. I had one with me.

Q. Did Daniel Justus indicate in any manner on which sides the trees when standing were marked?

A. He did.

Q. Did you set your *compas* to examine the direction of the lines coming to or departing from the trees if they had been so marked?

A. I did.

Q. What were the directions.

A. As I recollect it Dan walked up to the lower side of the lower poplar and showed with his hands on the stump that it was marked with three marks on the eastern side of the stump and on the northern side a little east of north and I believe he made motions with his right and left hands, as though he were marking a tree. I afterwards or at that time put the *compas* on the stump, and by that know that I am right, as to what sides of the tree he said was marked.

Q. How soon did all four of us in company with Daniel Justus visit those stumps the second time on that day?

A. I *couldent* state just how long it was but it was very *doon* after the first trip.

Q. Did he on both visits on that day point out where a sugar tree stood?

A. He did.

Q. Is that the same place that you, with Mr. and Mrs. McInturff dug into on the 31st. day of May last?

A. It is.

Q. After returning to the house after the second visit to the stumps was there any statement made by Daniel Justus and taken down by any of our party?

Objected to by the defendant King, as *incokpetent* and leading like the majority of the *preceeding* questions.

A. There was a statement taken down by Mr. *Sheppars.*

Q. Who were present at the time that statement was taken down?

A. John A. Sheppard, C. W. Campbell, Harve Charles, Daniel Justus wife, myself and *posibly* some of Dan's children or family.

page 381.]

Q. State how the statement was obtained and what was done after it was written?

A. Daniel was asked to *repeate* the statement that he had made us, Mr. Sheppard took it down according to his dictation, it was read to him; he was asked if it was correct and he said it was.

Q. Up to that time had there been any private conversation or interview between Daniel Justus and H. G. Charles?

A. There had not.

Q. Did he at that time mention the names of any persons who had seen the corner trees, if so whom did he specify?

A. He named several most of them were Lesters. I dont believe I can call all of their first names, I could name them if I saw that memorandum book, He named James Justus, his wife, Jake Lester, Sarah Justus, Riley Lester, Wayne Justus, J. H. Lester, Reece Davis, W. A. Lester, Miles Lester—I believe that is all that he named at that time.

Q. Were you present at the interview had by Mr. Sheppard

with Julina Justus, Dan's wife, and an interview had with Morgan Justus, Dan's brother?

A. I dont remember Morgan Justus, specially but I am sure that i was at the interview with all of them named by Mr. Justus with the exception, of the sick boy—one of the Lesters, I dont remember his first name, he was too sick to come to Dan's house and Mr. Sheppard had to go to where he was.

Q. Do you know Daniel's brother, Lafayette Justus?

A. I do not.

Q. Did you do any surveying at or near the stumps above referred to in the hollow above Dan's house at any time?

A. None with the exception of what measuring I did around there sighting my *compas* from the stump.

Q. When was that?

page 382.] A. When we were first up there and after the surveying was all finished—after Stone's surveying was all finished.

A. Were you present at any time when G. S. Stone or any person else was running a line, to from or among the said stumps?

A. Only while he was running some of the smaller surveys in the vicinity of the stumps. Not long after Stone had began his survey, I was sent to Kentucky on some other work and did not get back until after it was finished.

Q. Did Lafayette Justus or any other person, known or unknown to you at any time say to you or in your presence while surveying was going on in the immediate neighborhood of those stumps that those trees were never marked and that there was no sugar tree there?

A. I never heard those corners or stumps of corners disputed until I heard it on the witness stand in the taking of this evidence.

Q. Were you present when Reece Davis made a statement of what he knew in reference to those corners and it was taken down by Mr. Sheppard?

A. I was.

Q. After it was taken down what did Mr. Sheppard do.

A. He read it over to Reece Davis, asked him if it was correct and Davis said it was.

Q. Were you present on the second days visit to those stumps when Reece Davis came up there?

A. Yes.

Q. Did Dan Justus, at any time say to you or to any of us in your presence or hearing that the marks on the poplars had or had not gone through the bark into the wood?

A. I dont remember of his having ever mentioned the marks to me in that respect at all, nor do I know of his having mentioned them to any body else.

Q. What do you know about a sugar tree snag that page 383.] was brought?

A. We had heard through Mr. Pleasants that Mose Charles knew of an old sugar tree corner some where on Knox Creek. On the 25th. of July, 1901, Mr. Sheppard and myself went up to Knox Creek to investigate it. The next day on the 26th. Mr. Sheppard, Mr. Pleasants, Mose Charles and myself went up the John's Branch of the Paw-Paw Fork of Knox and up to the dividing ridge or fork point between the Paw-Paw and Race Forks and Mose Charles pointed out to us part of an old sugar tree stump, one side of which was burned away and part of it lying beside the stump or roots. Mose said that he had known that as being marked as a corner since 1854 or 1855, said it was standing until about 1899, when it burned down. He showed us *unwhich* side of the trees the marks were, or rather had been. We examined the ground around there and came back down the hill. I went and reported the facts to Mr. Campbell after that and I got instructions to take that part of the sugar tree, which should have had marks on and take care of it until he could examine it. I had it brought down and put in Mose Charles smoke house and told Mose to lock it up. Mr. Campbell afterwards came up there to Moses house and after looking at the ground went and looked at the piece of stump, I believe, said he *dident* think that was the corner, or ever had *beeen* a corner to the King survey and told me to have it taken back to the place where I got it and I had that

done. On one of my trips up the mountain where this old sugar tree was I saw three small sugar trees marked as corners in the vicinity of the stump, within a few of it. This led me to believe that possibly the old sugar tree which had burned down, had been a corner tree to some other survey and after it had burned some one had marked these other sugars in its place. That is the history of that sugar tree so far as I know.

Q. Had it been ordered that that piece of sugar tree be taken back to its location on top of the ridge before we met Daniel Justus on the occasion you have mentioned and before we heard anything about the other corner?

Objected to by the defendant King.

page 384.] A. It had been ordered and it had been done and I remember paying for it as we came down after seeing Daniel Justus, on the same day.

It is ordered that these proceeding be now adjourned until tomorrow morning at 8 o'clock, A. M. at the office of the Commissioner.

J. T. GRAHAM,
Commissioner.

Met this the 21st. day of November at the office of the commissioner in the city of Huntington, West Virginia, pursuant to adjournment on yesterday.

Present: The same attorneys as on yesterday.

The testimony of C. L. GAUJOT, was resumed and continued as follows:

Q. State what you may know about obtaining from Daniel Justus a certain paper writing purporting to be a contract between him and Henry C. King, bearing date the 21st. day of April, 1902?

A. Some time during the latter part of April we heard that Dan Justus had sold out to King and I went to Knox Creek accompanied by Rush Slater of Williamson, to see if I could find out what Dan had really done. After being on Knox Creek a day or two I met Dan Justus just below the house of Joshua Justus.

I spoke to Dan and said to him "Dan I understand you have gone back on us". At that time he did not tell me just what he had done merely saying hat he was trying to help himself and his people. I made an appointment with Dan at the mouth of the Race Fork at that time but Dan instead of keeping his appointment with me rode by me without speaking up Race Fork to his home. A day or two after that Tom Felts and John B. Maynard came up to assist me in finding out about this matter. A day or two after they came Dan Justus sent me word that he wanted to see me, making an appointment one night at the house of one of the Lester boys, who lives on Race Fork at the place where Reece Davis formerly, lived. I went up there after supper and I had with me Rush Slater, John Maynard and Tom Felts and as I recollect it Dan was there when we got there. He called me outside of the yard and we sat on a log in the little hollow that comes in above the house. I dont know that I can explain the conversation exactly but I will give the purport of it. The conversation was all regarding his having turned over to King and he asked me during the conversation what would be done to a man providing he had sold out his testimony and making affidavits in a suit, he *dident* say that he had done so and *dident* mention any names, but I took it for granted that he meant himself. He also wanted to know what would be done to him if he changed over again to where he originally was in the matter of the evidence pertaining to the stumps by his house. I told him that I *dident* think King could afford to prosecute him and I *dident* think that the people whom I represented would prosecute him. While we were out there Tom Felts was called out several times but during the course of the conversation, which lasted possibly two hours he was with us but a very short while—stayed but a few minutes. Before we left—separated that night, Dan promised to meet me the next day, at or near the mouth of the Race Fork and said he would bring certain papers which he would show me. I asked him if he could also get Reece Davis and bring him with him. He said he thought he could and would go and see Reece Davis the next morning. We all left after that and went

page 385.]

down to Sam *McInturuuf* where I was staying. The next day about I guess six o'clock in the evening John C. McCoy, Daniel Justus, and I believe Reece Davis came to Sam *McInturuuf's* front gate and called me out, Tom Felts, coming out with me. When I got to where they were, John C. McCoy said to Daniel Justus, "Let me see that paper"? Daniel Justus handed him an agreement which McCoy handed to me, which was an agreement between Henry C. King and Daniel Justus, it was a duplicate original of the agreement filed by King at Williamson page 386.] After reading the agreement I asked Dan if he would go to Williamson with me, he said he would. I already had made an arrangement for a car to take us to Devon, Reece Davis, Daniel Justus, myself and Tom Felts, went down to the mouth of Race Fork, got on a car went to Devon where we caught number three on the Norfolk & Western and went to Williamson. When we got there I had E. H. Simpkins take Dan Justus and Reece Davis to the house of my brother *Earnest* Gaujot and told them to remain there until the next morning when I would come and see them, train number three gets into Williamson about 1 o'clock at night. I saw Daniel Justus and Reece Davis for a few moments the next morning and I left on the number twelve train for Knox Creek and the next night I again saw Dan Justus and Reece Davis, at Devon station on their way home to Knox Creek from Williamson. During all my conversation with Dan Justus he at no time denied the presence of the corners near his house. He told me that he had made this statement and affidavit for the purpose of getting some money out of King and to get quit claim deeds for the land owned by his people and also said that everything would be all alright after he had succeeded in doing that. At no time while I was on Knox Creek did I ever make or cause to be made any threats of any kind towards Dan Justus and I do not think Felts, Slater or Maynard made any threats if they did, it was contrary to any orders given them, and they *couldent* of threatened him directly because at no time were they in his presence alone, or away from me.

Q. Was Justus or Davis either arrested or put under restraint?

A. They were not.

Q. Was there any offers of any character in any form whatsoever, for any purpose whatsoever, made authorized or permitted by you to Daniel Justus or Reece Davis, at any time?

A. There was not. I want to explain some thing else there, that my reasons for sending Dan and Reece to my brother's house instead of to a hotel. The first place I did not *wnt* King's representatives to know that they were down there with us until we secured from them the statements which they said they would make; and the next place I was *afrain* that if they remained down town they would get drunk.

page 387.]

Q. Are you familiar with the ground and the topography at and about the mouth of the hollow where Dan Justus lives?

A. I am.

Q. What is there at the mouth of the hollow?

A. Well near the mouth of the hollow is Dan Justus house and below the hollow is quite a high piece of ground—sort of a knoll and above his house a barn, chicken coop and so forth and right near the branch in front of his house a spring.

Q. What is the elevation of the knoll at the mouth of the hollow about what is the area of the knoll on top and how far is it to the spring from the top of the knoll and how far is it to the main creek of Race Fork?

A. I would say without taking measurements that the knoll is about ten to fifteen feet above the bed of the creek—that is the *the* top of it, as to *ita* area I dont know, I would say that it is possibly 150 feet from the spring to the top of the knoll and about the same to the main creek.

Q. What is the ascent from the spring and also from Race Fork to the top of the knoll?

A. Why it is not a hard *claimd* at all from the top of the knoll to the creek or spring, I believe I said it was from ten to fifteen feet higher than the creek and 150 feet away from the creek which would make the grade about one foot in ten.

Q. How would you regard that knoll as a place for a *sanging* camp?

A. I dont know anything about a *sanging* camp but an elevated place near water is the best place for any kind of a camp.

Q. *Ho* do you regard that knoll as a camping place?

A. It would be a good camping place?

Q. Is water convenient to it?

A. It is.

page 388.] Q. Did you ever stand at the stumps in question and observe over what kind of ground a line running from that place eastward on the degree which Stone run a line from there to the alleged four white oak corner, would pass?

A. Why it would be ascending coming towards the corner.

Q. To what point and from what direction?

A. I mean coming from the four white oaks to the poplar stumps, the line would be ascending after it crossed Race Fork.

Q. Would such line cross any ridge between Race Fork and the stumps?

A. That would be impossible for there is no ridge there for it to cross after the line reached the creek.

Q. Where would such line cross with reference to the little knoll spoken of at the mouth of the hollow?

A. It would cross above the knoll on the creek.

Q. Do the stumps occupy a greater elevation above Race Fork than any ground over which such line would pass between the stumps and Race Fork?

A. Yes sir. I know that for this reason—On my second trip to the stumps I went to a point on the hill side opposite to the mouth of the Dan Justus branch, on a level with the stumps and as I recollect it I took a photograph from that point of the stumps and the surrounding locality and if there had been any higher ground between I *couldent* have *gotte* the photograph.

Q. Returning to the first interview had with Daniel Justus had at his house and the first visit to the poplar stumps when he indicated the manner and position of the corner marks on trees

what *is* anything had been said to Daniel Justus or in his presence about how the corner should be marked?

A. Nothing that I know of was said to him as to how they should be marked and I was with him all the time.

Q. Have you travelled to any great extent over the waters of Knox Creek and of Tug River in Mingo and Pike counties and the waters of Guyandotte in Logan and Mingo Counties

page 389.] and observed the timber growth along the streams?

A. I have been in some parts of the territory mentioned continually for the last ten years and have observed the timber.

Q. What is the prevailing growth along the streams for a short distance up on the hill sides?

A. I would say that beech timber was.

Q. Referring to the affidavit made by Daniel Justus on the 21st. of April 1902 in Kanawha County, he therein states that John A. Sheppard a lawyer of Williamson, West Virginia, in company with H. G. Charles of Knox Creek, came to his house, and then undertakes to detail what occurred, which I read to you (here he reads) and then says that on the next day after said Sheppard and Charles were there that Sheppard, C. W. Campbell of Huntington, Claud Gaujot, a surveyor, of Williamson and Reece Davis and Harve Charles came to his house, state what you know whether Sheppard and Charles had visited Daniel Justus house the day before the visit you spoke of when Daniel Justus was met for the first time at his gate

Objected to by defendant King, on the grounds that it has been explained by Daniel Justus on the witness stand.

A. I know that *John* A. Sheppard and Harve Charles were not there the day mentioned nor the day before that. I have here in my diary a statement written down at the time showing that on the 19th. and 20th. of August, John A. Sheppard, C. W. Campbell Harvey Charles and myself were together on Knox Creek and that we were not on the Race Fork of Knox Creek at any time during those days

Q. Did any such conversation or conduct as detailed in the

affidavit referred to and which is filed in this case with the contracts between Henry C. King and Daniel Justus ever occur between Sheppard and Justus at any time or place when you were present?

A. No.

page 390.] Q. You may state what you may know about the similarity between poplars and lynns?

A. They are very much alike more especially so in the young trees, when the leaves are off it is very hard to tell the difference. The day Sam McInturff I looked at a good many popiars and lynns with this comparison in view.

CROSS-EXAMINATION

By Judge Stiles.

Q. In whose interest were you conducting enquirys and explorations on Knox Creek, in the summer and fall of 1901 to which you have referred?

A. In the interest of several land owners viz. Arthur D. Bright, Arthur D. Bright, Trustee, Egbert Mills, Jr. and also as Trustee, James E. Price, and as Trustee, William H. Lawson and as trustees, That is all I can remember now.

Q. Are the persons with whom the Kountze Brothers are interested?

A. I dont know that Kountze Brothers are interested at all.

Q. Do you know whether any one of the Kountze Brothers is interested?

A. I think Mr. Luther Kountze is interested.

Q. Are you or have you been in the employ of any of the persons mentioned and if so how long?

A. I have been for the last ten years with the exception of two years out of the ten, *durinh* which time I was in business myself.

Q. You were more directly in the employ and under the direction of Mr. Kountze or the Kountze Brothers, were you not?

A. I dont believe I ever spoke to Mr. Kountze about employment in my life, I was employed by my father, and during the time I was in their employ I have only seen Mr. Kountze once.

Q. Your father is in the employ of Mr. Kountze is he not?

A. I dont know that he is in the employ of Mr. Kountze.

Q. What is your understanding about it?

A. He is employed by the parties whom I have named, possibly another trustee or two.

page 391.] Q/ But is it not a fact whether of any importance or not that the Kountze Brothers or some one of them, is the responsible head under whom you and your father act and represent the interest you have referred to?

A/ As I understand it Mr. Kountze has, I suppose the largest interest, and for that reason I suppose has more to say about the business than any one else.

Q/ When you were on the Race Fork at Dan Justus place on the 31st. of May last with Mr. and Mrs. McInturff, who did the digging the ground after roots?

A. We all did some digging.

Q/ Did you use anything but your fingers?

A/ I am not sure whether we had any tool of any kind or not. *but* we either had a tool or a stick as I know we dug down in there with something.

Q. Who used the tool or stick, if you had one?

A. We all dug in some manner.

Q. If a right handed chopper had marked the *popl* trees mentioned would he not naturally have stood on the east side to mark the north side of the trees and on the south side to the mark the east side of the trees?

A/ He could have done that but it seems to me that it would have been more natural for him to have stood on the northeast side and marked both sides from that place.

Q. Where would a left handed *chpper* have stood?

A/ I dont know where he would have stood but the most convenient way it seems to me would have been for him to have stood the same place that a right handed chopper would have stood, because either a right or left handed chopper marking that tree, standing in one place would have had to have reversed their way of chopping to have made their marks on the one side or the other.

Q/ You think then that a right handed and left handed chopper chop the same way and take the same position?

A. No sir. But chopping down a tree and making three marks one each side of a tree are two different things and he
page 392.]. could *stood* in one place and marked two sides of a tree, easier than he could have shifted his position for the purpose of handling his ax in his usual manner of chopping. Especially so if he was marking with a small hatchet.

Q. On which side of the stumps is the ground lowest and which side highest?

A. The lowest side would be that nearest the branch—or the north east side—possibly a little north of east: the highest side would be a little south of west.

Q. Did you notice on which side of the trees they had chopped into in felling them?

A. About north and south sir.

Q. Did you make any observation for the purpose of determining that fact.

Q. I laid a *compas* on the stump and got the points of the *compas* that way, but at the time I put the *compas* there I did not have *ths* particular point in view but remember the points of the *compas*.

Q. You noticed, you say the similarity in the appearance of the lower stump and the log in the drain below the stump did you not notice that there were splinters on each that corresponded with holes or cavities in each where the splinters on the log appeared to have pulled out of the stump and the splinters on the stump appeared to have pulled out of the log?

A. I stated that I noticed a similarity in the break of the tree, I meant by that that part that broke off after the chopping was done, this similarity was a splinter in the stump and a cavity in the log.

Q. Did you not while in that neighborhood ask Mrs. Daniel Justus, where that log in the drain came from and did she not say it came from the lower poplar stump?

A. I did ask her such a question, I believe in May last. She told me that the log did come from the stump.

Q. Did you not then say to her that Dan had told you it came from up the hill above there and did she not say that if he told you so he told you a point blank lie?

page 393.] A. I did and she did. And she further went on to say when I mentioned to her regarding Daniel's having contradicted his first statement to us that he was lying when he did so.

Q. Did you measure the length of the splinters on the end of the log or stump?

A. No sir.

Q. Were you with Stone when he ran the line from the four white oaks corner to the stumps in question?

A. The only part of that work that I was on was in the running of the meander line by way of the creeks from the stumps to the four white oaks and I platted that meander line so as to get the true course between the two points, but I was not along on any of the running on the ground of the line so ascertained.

Q. You were not at the stumps when Stone came into them with his line from the four white oaks?

A. I was not.

Q. You *didcnt* see where Stone ran the line in approaching the stumps?

A. I saw where he ran it but *didcnt* see him run it.

Q. You were on the ground with Stone you say in the neighborhood of those stumps when he was running out some of the smaller surveys in that locality?

A. I believe that was my statement.

Q. How long were you around there at that time?

A. I was camped right in the midst of these surveys and stayed there while on Race Fork. I was there part of the time for three weeks.

Q. Were you there most of that three weeks, how much were you away?

A. My camps were there from the time we began the survey

for about three weeks, a good part of the time I was at the camps always there at night when I was on the creek, was up and down the creek along while he was running the meander lines, was with him part of the time on some of the smaller surveys, saw him and his party several times each day when they were in
page 394.]
the field and we did all of the platting while I was there and in other words I had general charge of the work. When Stone started from the stumps at Dan Justus house to run the meander line to the four white oaks and up to where Sell had crossed in running *his* line I did not go with him to the point of beginning, I mean by the point of beginning the stumps at his house.

Q. You were about the stumps and the house and the immediate locality a good deal of the time when Stone was surveying in the locality of the stumps and hollow, were you?

A. I dont think I was at the stumps at all. I may have been to Dan Justus house a time or two, but as I stated before my camps were right at the sulphur spring a short distance below Justus house and I made my camps my home while on the creek.

Q. Do you remember what *survey* were run out by Stone under your supervision in that locality?

A. Estep survey, I dont remember the acres, Coleman, and Lonheart.

Q. And you were with Stone from time to time while he was running the lines of these surveys?

A. I believe I was with him two different times for a short time each time.

Q. What were you doing when not with him during that three weeks?

A. Attending to the business connected with that work.

Q. Did you look up the surveys that you deemed it necessary or proper to run?

A. What do you mean by looking them up?

Q. I mean to ascertain what ones you wanted to run?

A. Mr. Sheppard and Mr. Campbell went to Grundy and got

for me from the surveyors books of the Surveyor of Buchannan County what small surveys were located in that vicinity. I did not examine the surveyors books myself but used the copies which they supplied and I afterwards sent to Richmond Virginia for the same papers.

page 395.] Q. Were any other surveys submitted to your examination and consideration other than those that you had surveyed out?

A. No sir.

Q. Did you learn of any lines of other surveys running into the Dan Justus hollow or into the immediate neighborhood of it, besides the one Stone surveyed?

A. I did not, for if I had I would certainly have had them run. My instructions were to do all in my power towards finding out if these stumps shown us by Daniel Justus could *possible* have been corners to any small survey or any other survey in that vicinity, that was why we were having these smaller tracts surveyed.

Q. Did you find any marks on the sugar tree root or stump that you had brought down to Mose Charles?

A. No sir.

Q. On which side did Mose Charles say that that tree was marked? Can you tell without referring to your memorandum?

A. I cannot tell without referring to my memorandum but upon referring to it I find the following as stated by Mose Charles "The sugar tree was marked as a corner tree. He *remember* three hack marks on the east side and three hacks on the north side." The only part of the sugar tree which was not burned at a place on the tree where marks could have been made was a small piece possible ten inches wide and five or six feet long which appeared to come from the south east side of the tree and which was the piece which we cut off and took down to Mose Charles house and afterwards returned.

Q. Could you discover whether that was a corner tree of any *know survey?*

A. I *dident* try to. After we took it back I paid no more attention to it. The only thing that led me to believe it was a corner to some other survey was the fact that three small sugar trees had been freshly marked in the immediate *vivinity* of the old stump and I heard either Mose or Harve Charles state about that time*ta* that John C. McCoy and I believe one of the Baldwins had been surveying in that vicinity. I desire to state that I meandered a line from the sugar tree stump on the ridge between Paw-Paw and Race Fork down Jack's or Johns branch of Paw-Paw to Paw-Paw and down Paw-Paw to its mouth. That was done before the piece was taken back up on the hill.

[page 396.]

Q. Who first suggested to you an investigation of that stump and who went with you to the place?

A. Which stump do you mean?

Q. The one on Johns Branch?

A. You mean on the ridge between Paw-Paw and Race?

Q. Yes the one you were last talking about.

A. Mr. Sheppard told me that Mr. S. D. Pleasants had heard some rumors of a sugar tree corner and I believe that he Mr. Sheppard and myself talked the matter over and we decided to go up there to investigate it and on Sunday July 25th. we went up to Knox Creek, Mr. Sheppard and myself, stayed all night with Harve Charles and the next morning Mr. Sheppard, Mr. Pleasants, Mose Charles and myself went up there. Now I may be mistaken in the day I notice in my memorandum I have marked Sunday 25th. and on the next page, "Friday July 26th." There is a mistake in one place or the other.

Q. What did you do about the stump after you got there?

A. We examined it for marks, walked around there, around the ridge and that is about all—came back.

Q. Was there any other timber around it besides the three little sugar trees standing or fallen?

A. Yes sir lots of it. *Diferent* kinds.

Q. Poplars and so forth?

A. Yes.

Q. When was it dug up?

A. It *wasent* dug up.

Q. Was it loose from the ground at the time you first saw it?

A. It was it had burned down right close to the *grouns.*

Q. Did you have it brought down to Charles that day or when?

page 397.] A. No sir it was brought down about the 30th. of July.

Q. Do you know just the day of the month?

A. No not exactly, I was up there on the 30th. for that purpose and it was either brought down that day or the day after. I remember distinctly that it was put back up there *before* August the 21st. That was the day we first met Dan Justus and coming down from his house I called Mose Charles out in passing his place and paid him for the work he had done bringing the piece down and taking it back.

Q. Were you there when the stumps were brought down?

A. I was there when it was chopped off and Mose Charles and whoever was helping him went down to the Race Fork with it from the ridge and I came down the Paw Paw side.

Q. Who was with you at the time?

A. I think Warden Allison and Mose Charles, Crocket Allison was on the creek but did not go up. I believe Reece Davis helped to take it down or bring it back up, one or the other I am not sure.

Q. *Dident* he do both?

A. He may have I am not sure. When I said that we chopped the piece of a stump it was not standing as a stump but was that part of the tree which had not burned but had fallen and was attached to the log and was the only part of the tree left

where marks could have been placed. We chopped this off from the log.

Q. Fix if you can the day that the sugar tree stump was taken back where it came from?

Q. Nearest I can come to fixing it is that it was before the 21st. day of August.

Q. How long before?

A. I cant say.

Q. Were you there when the stump was brought down and when it was taken back?

A. I was not there the day it was taken back.
page 398.] I was there the day it was taken down as I stated before.

Q. Do you know who was there the day it was taken back?

A. I believe Mose Charles, I understood he took it back I *kjow* I paid him, possibly Warden Allison, Possibly Reece Davis and Mose may have had some one else helping him. I *wasent* there at all.

Q. Do you know where you were the day it was returned?

A. If I knew where I was I would know what day it was, I dont know what day it *wwas.*

Q. *Didont* you *frnish* the money to Allison instead of to Mose Charles to pay for removing or replacing this sugar tree stump?

A. As far is Allison is concerned I dont think I supplied with any, if he is telling the truth because I met him not long since, and he claims that I still owe him some for some work he did on Knox, there evidently being a mistake between his account and mine and as I stated before, I believe twice, I paid Mose Charles on *the 21st. day of August*, not only did I pay Mose for what work he had done but gave him the money on that day to pay those *whoe* were helping.

Q. What day did Mr. Campbell come up to examine that piece of wood?

A. I dont remember, I will see if I find a memorandum of it in my notes. I dont know sir.

Q. Did he go up to the place where it had been removed?

A. I dont *thing* he did sir. I do remember being with Mr. Campbell at Mose Charles house or in front of his house on the Race Fork with Mose Charles and some one of us pointing out to Mr. Campbell the place on the ridge from where it came.

Q. When did you run the meander line from where the sugar tree chunk was found down Paw Paw Creek?

Q. The first day of August 1901.

Q. Was that before or after Mr. Campbell came up there.

Q. You told him about meandering you had done?

A. Yes sir.

Q. Make any examination of the map made by Sell, or any other map to see where the sugar tree was located?

page 399.] A. I did.

Q. Where was that situated with reference to the point "S" on the principal map filed in this case?

A. I dont know anything about those maps. I would like to have the map to look at. (here map is handed the witness). (Wtiness after looking at the map answers: About two miles possibly two miles and a half, in a northerly direction from "S".

Q. How many times were you on Knox Creek between your first visit in July and the 21st. of August 1901 and how long did you remain each time?

A. I will exclude the first and last time referred to. I went there on Tuesday July 30th., left there August 2nd., that was all that I recollect or have any minute of.

Q. Where did you stay on that occasion and the previous one and on the trip you made about the 21st. of August?

A. At the house of Harve Charles at the mouth of Paw Paw.

Q. When you set out to look up a corner on Race Fork did you start from Harve Charles house?

A. Which corner do you mean?

A. Well any corner.

Answer by witness. When we started out to look for the first corner that is the first sugar tree on the ridge. Mose Charles met

us at the mouth of Paw Paw and I started from Harve Charles house Up until the time I put camps on Race Fork I had headquarters at Harve Charles and started from there every morning while I was there. I believe I stayed one night at Hurley, at the boarding house.

Q. How many persons were about the premises at Dan Justus when you were there on the 21st. of August?

A. Eight grown people and some children. I mean including the four in our party.

Q. Were you especially on the look out to see what was the whereabouts of each member of that party during your stay with reference to the opportunity for intercommunication, or do you speak from general recollection at the present time?

A. I speak from general recollection at the pres-
page 400.] ent time. I had no reason to be on the look-out for anything of that kind—there was nothing secret about it. I mean there was nothing secret about our business—nothing to be hidden, nor did we keep the result of our finding secret.

Q. Did you communicate the result to any one outside of your immediate associates?

A. I believe I told it to nearly everyone whom I saw and whom I thought it would interest.

Q. Did you tell it to me or any representative of Mr. King?

A. No I did not. I dont believe I saw any of you. I dont believe that I would have had I have seen you.

Q. Did Mr. Pleasants ever mention to you any other trees as a probable or possible corner of the Morris grant, except the sugar tree that was brought down to Mose Charles and afterwards replaced?

A. He did not.

Q. Did he ever mention having done any surveying or helping to do it or having it done on Race Fork or that neighborhood?

A. He never mentioned to me having done any surveying or

having helped in any surveying nor do I recollect of his ever having told me of having had any surveying done. He told me that he represented Mr. Stuart in some lands there and in the course of his conversation he might have said that he had the land surveyed, but if he did say so I have no recollection of it.

Q. When and *hod* did you hear that Dan Justus had sold out to King as you express it?

A. I first heard it here in Huntington I believe in Mr. Campbells office, Mr. Lyon was, I believe the first man that told me, I had come from Richmond that day. This was on the 24th. or 25th. of April 1902, or right close to that.

Q. You then immediately went to Knox Creek to see Dan did you?

A. No sir.

Q. How soon after?

page 401.] A. I believe I went to Knox Creek the next day or the day after that I am not sure. I do remember stopping some time in Williamson after leaving this place.

Q. Who was Tom Felts and what is his business?

A. His card says special agents Norfolk & Western Sea Board Air Line. Baldwin's Detectives.

Q. Is that all you know about him?

A. The first time I ever *mon* him was when I met him on Knox Creek several days after I had been there.

Q. Did you meet him by accident?

A. No sir by appointment.

Q. In short he is well known detective with a long experience in the government Revenue Service and in general detective work with a reputation for getting a man when he goes after him, is he not?

A. This is the first time that it was ever *cention* to me that had ever been in the Government Service. I had heard of him before as being connected with the Baldwin detective agency. When I first met him on Knox Creek I believe, I said it was the

first time I had ever seen him, which was not as I had seen him once before in Williamson.

Q. Do you know who sent him to you on Knox Creek?

A. Mr. Campbell.

Q. Who is E. H. Simpkins?

A. Son of Joe Simpkins.

Q. Tell where he lives and what his occupation is and has been?

A. He lives at Devon. Dont think he has any occupation. I believe he claims to be somewhat of a surveyor. He has done some little work for me as chairman and has clerked in the store at Devon. I believe he was at one time a deputy sheriff in Logan county. Has been a merchant, and a school teacher and a few years back was County Superintendent of Mingo County.

page 402.] Q. Who are Rush Slater and the man by the name of Maynard that you mentioned?

A. Rush Slater is a boy from Williamson, for the last two years has been connected at times with the Balwins Detective Agency for the Norfolk & Western Railroad. At that time John Maynard was Mine Police for the Logan Consolidated Coal Co. Before that he was *sargent* for the town of Williamson, I believe.

Q. Where do I understand you to say you think the line run from the four white oaks to the stump back of Dan Justus house, would cross, with reference to the knoll opposite his house?

A. Above the knoll—I mean by that up Race Fork from the knoll.

Q. Would it cross back of his house or in front of it.

A. Cross back of his house up the creek.

Q. You *dident* run that line yourself?

A. No sir.

Q. You say a lynn closely resembles a poplar in *appearence*, does not a cucumber resemble both of them?

A. Yes sir.

Q. Is your recollection of the matters about which you have testified distinct independent of your memoranda to which you have frequently referred during your examination?

A. Where I did not refer to my memorandum I am perfectly clear in what I state. Where I did use my memorandum I was not so clear or sure. I want to state that the notes in the memorandum I used were all taken at the time the different facts happen or came to my knowledge from day to day, nor has the memorandum been changed in any way since it was first written.

RE-DIRECT EXAMINATION.

Q. What line is it you have in mind that would cross from the stumps in question back of Dan Justus house?

A. The line from the poplar stumps at his house to the four white oaks.

Q. You mean the first little house he built on the east bank of Race Fork?

page 403.] A. No I mean the house that he lives in.

Q. Are you not mistaken in that and does not the east line cross back of the knoll and cross the Race Fork somewhere near the first house that Justus built?

A. If it does cross near the first house that he built I am mistaken, because they are some distance apart—one being *being* above this branch and the other being below this branch.

Q. Referring to the first visit to the house of Dan Justus in August 1901, when we met Dan Justus for the first time please state as near as you can the time that elapsed after we dismounted from our horses till Dan Justus had pointed out the stumps and described where and how they were marked?

A. He did so almost immediately on our arrival on the porch and after we had seats and we came direct from our horses to the porch.

Q. How soon did Daniel take us up to the stumps and show how and where they were marked?

A. I don't suppose it was over ten *ofr* fifteen minutes from the time we first got off our horses until we got to the stumps. I *I* dont know the exact time but it was almost immediately.

By the witness. I wish to correct my testimony as to where *t* line would run from the stumps above Dan Justus house to the four white oaks, with reference to Dan Justus house. I find by referring to my note book, that on June 12th. 1902 I was at the poplar stumps in Daniel Justus branch and on that day made a sketch (Samuel McInturff and Levi Lester were with me at the time,) to which I now refer and find that I was mistaken that the line run by Stone from the Poplar stumps to the four white oaks, run in front of Daniel's house and not behind it, as stated in a previous answer.

RE-CROSS EXAMINATION

Q. That being the case the line after crossing the Race Fork does cross the ridge between the fork and the Dan Justus hollow, does it not before reaching the hollow or the poplar stumps?

A. There is no ridge there.

page 404.] And further this deponent saith not.

CLAUDE L. GAUJOT.

3 days and 195 miles.

G. S. STONE, a witness heretofore introduced by the contesting defendants, being recalled by the contesting defendants and after being duly sworn upon oath testified as follows:

EXAMINED

By Mr. Campbell.

Q. You have heretofore testified that you had been at what was called the Muzzle Corner of the Morris grant, did you while there make a diagram of the two poplars and two chestnuts, called for, showing their location with respect to each other ,with their distances between them, if so where is that diagram?

A. I did and the last time I saw the book with the diagram

in it was about one month ago in my trunk *ar* War Eagle, Mingo County.

Q. On your return to War Eagle will you copy that diagram and file it with the commissioner?

A. I will.

Q. What is your present recollection of the form of that corner and the distance between the trees?

A. As well as I remember the poplar stump was about north thirty six or forty feet from the poplar tree that I blocked and the chestnut log that had been blocked, south-west of the poplar that I blocked, about twenty feet; and the chestnut log that was laying there about west of the poplar tree that I blocked about fifty feet. I have the measurements of them which I will file with you when I file the diagram.

The defendant King objects to the filing of any diagram after the witness leaves the witness stand which affords no opportunity for cross examination with reference to it.

Q. What was the greatest distance between any

page 405.] two of the trees?

A. About fifty feet.

Q. Referring to the deposition of W. C. Reddy he says that Daniel Justus told him that one of the blocks which you took out of the poplar tree near where your line between "P" and "S" crossed Knox Creek showed that the ax marks had penetrated through the bark into the wood and that the marks were not old enough and that you threw the block away, what is the fact about the matter?

A. I told Daniel Justus that I had cut a block out of the poplar tree and found that the hacks did not enter the wood and that I had left the block up there by the road side.

Q. As a matter of fact did the hack marks penetrate the wood?

A. They did not, at least I could find no hack marks in the wood.

Q. Was there any purpose or design to conceal that block from any one?

A. There was not.

Q. Did you afterwards go to the block, if so what was the result?

A. I looked for the block on my last trip there and did not find it.

Q. Do you remember the knoll at the mouth of the Dan Justus hollow immediately on the lower side of the little drain?

A. I do.

Q. Where did your line between P and S on the map cross with reference to that knoll?

A. It crossed the point between the hollow at Dan Justus and Race Fork near the foot of the point.

Q. Was it in or outside of the enclosed and cleared land on the knoll?

A. The line crossed outside of the cleared land at about 200 feet from the point S.

Q. Is the point S at the stumps higher in altitude than any ground *you* line traverses between there and the Race Fork?

A. I am of the opinion that it is.

page 406.] Q. Did you run the line of the R. D. Coleman survey between the gum and dogwood corner and the triple lynn corner?

A. I only ran from the triple lynn to where the line crossed Dan Justus branch, a distance of about 28 rods.

Q. Did you run the line of that survey between the triple lynn corner and the Estep corner described as a white oak, hickory and two birches on a rocky flat?

A. I did.

Q. What did you find the correct distance and bearing between those two points?

A. From the white oak stump and two birch stumps, the

bearing is north 52 degrees and 30 minutes west, 66 poles and 20 links.

Q. What did you find at the end of that course and distance?

A. I only found one of the lynns. It was down but I found on the bark old ax marks which looked very much like it had been a corner tree.

Q. Who if any one pointed out the lynn to you?

A. Dan Justus sent his son with me to show me the corner. He is the one that pointed it out to me. I have forgotten his name.

Q. Was the land at the location of the lynns cleared at that time?

A. It was not.

Q. Was it enclosed by a fence?

A. It was.

Q. How would you regard that knoll in the mouth of the Dan Justus hollow as a place for camping, and you may state whether such a location for a camp would be convenient to the spring and also to the water in the Race Fork?

A. It seems to be a very desirable place for a camp, as it is near to a spring and close to the main water course.

Q. Do you remember Lafayette Justus, a brother of Daniels visiting Daniel Justus, while you were engaged in that neighborhood in surveying, in the fall of 1901?

A. I remember of seeing a man that Dan Justus told me was his brother. I saw him passing down by our camps page 407.] on Race Fork of Knox.

Q. Did any conversation pass between you and him or by him in your presence and hearing?

A. I never spoke to him in my life that I remember of. I never saw him but the one time that I have any recollection of. I never spoke to him in my life.

Q. Did you ever hear him talk to any person else in your presence and hearing?

A. I never did.

Q. What county was he from?

A. If I remember right Dan Justus told me he lived in Nicholas County.

Q. How long if you know did he stay at his brother Daniel's?

A. As I understand it he only stayed there one night.

Q. While you were *tunning* the line up to the stumps in question in the hollow at Daniel Justus house did you hear Lafayette Justus say that the poplars were never marked and that the sugar tree was never there?

A. I did not.

Q. Was he ever present while you were surveying in the neighborhood of those stumps.

Q. No to my knowledge he *wasent*.

Q. Was Mr. Sheppard ever present while you were surveying at or near those stumps?

A. He was not.

Q. Did you ever hear a conversation while you were surveying there by any person that there was no corner at that place or that those poplars were never marked as corners or that the sugar tree was never there?

A. I did not.

Q. Do you remember of staying all night with N. L. Reynolds at the house of Daniel Justus on the occasion when Daniel Justus returned from a trip which he said he took to Charleston West Virginia?

A. I do.

page 408.] Q. What time did Daniel Justus return to his house that night

A. I do not know it was near day light before I knew he was there?

Q. Did you hear any conversation by him the next morning about those corner trees, if so what was it?

Objected to by the defendant King.

A. After we had had breakfast the next morning I asked Justus to go with me up to the corner and explain to Mr. Reynolds.

how he had explained it before, showing the location of the stumps and he refused to go and told me at that time that them trees were never marked, only with marks that he had put on them himself.

Q. Did Daniel Justus work with you while you were surveying up to there, if so about how long, and state whether he ever claimed that those trees were not marked until the *occassion* just referred to?

A. He worked with me most all the time I was up there and told me all the time that them were corner trees. Until I went there with Mr. Reynolds which was on the 23rd. of April 1902.

Q. When you *blcoked* the poplar near the line between P and S. on the map, did you measure the length of the marks in the bark of that tree and have you measured the marks in the poplar at the Muzzle Corner, if so how did the two compare in length?

A. I did. I measured them with my finger by plâcing my finger in the mark—the depression in the bark and they were just the length of two joints of my finger which is two inches.

Q. Was that the size of the marks in the poplar at the Muzzle corner?

A. It was they seemed to be just the same length.

Q. I forget whether I asked you on your former examination whether the chestnut tree at the Muzzle Corner had been marked on the north side, you may now state what you know about that?

A. The chestnut tree had fallen to the south and had been blocked on the top side and could the tree not have turned over in falling or been turned over after it fell the block would have been taken out of the north side.

page 409.]

Q. Did you examine the log and the part that remained standing with the purpose of determining on which side it had been marked, and if so state all the circumstances and facts that you there noticed, and *you* conclusions from those circumstances?

A. There had been a notch cut in the tree before it fell and from that notch to the roots of the tree there was a small part of the tree still standing and that notch appeared to be on the top

of the log as it lay, which would indicate that the tree had never been turned over.

Q. On which side of the tree was the notch cut and on which side was this portion still standing?

A. The notch had been cut on the north side of the tree as that portion standing was the north side.

Q. Did you see or observe any indications that the tree had turned in falling or after it had fallen?

A. I did not.

Q. Who was with you when you made these observations?

A. T. J. Mathews, Lewis White, and a Mr. Rife.

Q. Are you acquainted with the different kinds of timber that grow along the creeks and *tivers* in the section of country drained by Knox Creek and Tug and Guyandotte rivers and their various tributaries within the section of country where the King tract of land is said to be located?

A. I am.

Q. What kind of timber predominates along the water courses and for some distance upon the hills?

A. Poplar, Beech—in neighborhoods where timber never was cut *ther* seems to be more poplar close to the creeks, after getting back on the hill there is more chestnut oak and chestnut than any other kind of trees.

page 410.] Q. Is more of beech or poplar growing immediately along the streams and for a short distance up on the foot hills?

A. *It* the rich bottoms and along the creeks I believe there is more beech than poplar, in a great many places there would be a few acres with no beech at all and poplar timber on the same. In other localities you will find beech timber and no poplar.

CROSS EXAMINATION

By Judge Stiles.

Q. In running the line between the triple lynn, or what you call the triple lynn, and the birch white oak and hickory corner,

did you *pas* in the immediate neighborhood of the poplar stumps in controversy?

A. I passed within about 100 or 150 feet of the stumps?

Q. Did you find the line between those two corners to be the line given in the grant or survey by which you were running or was there a variation in course as well as distance?

A. I dont remember the distance of the line but I believe the actual distance was shorter than the distance. I ran from the two birches, white oak and hickory north 56 degrees and 15 minutes west at a distance of 56 rods and 15 links, surface measure, I was four rods to the left of the triple lynn and at that point I sent my rodsman back to the white oak and birch stump and corrected the course of said line which is north 52 degrees and 30 minutes west.

Q. Your corrected line passed nearer the stumps than the line you ran did it not?

A. It would be about two rods nearer the stumps than the line I run.

Q. The spring at Dan Justuses has been artificially hollowed out and deepened has it not?

A. It had been dug out deeper I suppose than it would have been. Justus used water from that spring.

Q. It is *till* a little better than a mud puddle is it?

A. It is.

page 411.] Q. How far is it from there to the sulphur spring where you camped?

Q. It is about half a mile.

Q. There is a better camping place there than that knoll at Dans *counld* have been before it was cleared, *isent* there?

A. The water is better at the sulphur spring, but I would prefer the grounds at the knoll for a camp.

Q. There were good camping places up the creek above Dan Justus were there not?

A. I saw a *sang* camp near the main head of the creek and there had been an improvement about a mile above Dan Justus.

Q. You could make a camp most anywhere along up there *couldent* you?

A. Yes sir.

Q. Did you know what Dan Justus brother name was who was visiting him while you were there?

A. I *dident* until Dan told me.

Q. Did he say it was Lafayette?

A. Yes sir.

Q. You say he remained there one night, did he not also remain there one or two days?

A. I understood that he passed up by our camp the night before I saw him pass down the creek and I never heard of him being there before or since that time.

Q. You were a comparative stranger in that neighborhood, were you not?

A. I was.

Q. Unaquainted with most of the people who came and went and who you saw around there, were you?

A. I *dident* know but very few people there, at the time that Lafayette Justus was there.

Q. You were surveying around the immediate neighborhood *or* Dan Justus house about that time were you not?

page 412.] A. I am of the opinion that I did the surveying in the vicinity of Justus house, except running the line P to S and thence to the mouth of Gilbert ZZ. before I saw Lafayette Justus.

Q. Do you refer to the running of the lines of the small surveys

A. Yes sir, and running a line from the creeks up to the stumps above Dan Justus.

Q. Is your recollection distinct and positive that you had completed all that works before you saw Lafayette Justus?

A. It is not.

Q. Why did you throw away the block from one side of the

poplar tree west of the four white oaks and why did you bring in and preserve the one from the other side?

A. I did not find any marks to penetrate the wood was the reason that I left the block by the road side, opposite to the tree. After blocking *he* tree on the east side that is the first block I *wase* back there afterwards to block the other side and bring the blocks in, not finding the block from the east side I could not bring it but did bring the other one.

Q. In the Knox Creek country and in the Guyandotte and Tug country you can find most any kind of timber you please to call for along the water courses and hill sides, can you not and especially white oak, beech, sugar, lynn, cucumber and poplar and in fact almost anything but chestnut oak, which latter usually grows on the high ridges?

A. Where there is no improvements you can.

Q. When were you last at the Muzzle Corner?

A. I believe it was in January 1896, I aint positive.

Q. That is the time you made the examination of the chestnut tree that had been blocked and blocked the poplar and made the measurements you have mentioned?

A. It is.

Q. You were not executing an order of survey but were sent there secretly during a trial of a case at Parkersburg, by the counsel for the defendants therein unaccompanied by

page 413.] any representative of the plaintiff or of the court, is that so?

A. I had a letter of instruction from Mr. Sheppard, which if I remember right was delivered to me by Major Neibert, at Logan Court House, asking me to go there in company with Captain Mathews and block the Muzzle Corner. Whether Mr. Sheppard and Mr. Neibert intended it to be secret or not I cannot state, they never told me to keep it any secret.

Q. Lewis White, who you say was with you was in the employ of Major Neibert was he not?

A. Not to my knowledge he *wasent*.

Q. He was a tenant of his *wasent* he?

A. I think not. There are two Lewis Whites up there—it was the one they call Crook that was with me.

Q. The chestnut tree was so situated that you could get blocks out of about three different sides corresponding with the cardinal points of the *compas,* could you not

A. It could have been blocked from the top side or either side other than the bottom side.

Q. You found it a good deal sawed and split up *dident* you?

A. I did.

Q. Will a mark generally be found to appear longer or shorter on the outside of the tree than it will in the wood?

A. Should the full width of the ax penetrate the wood they would be the same distance except on occasion where the bark was worn by age or otherwise.

Q. An ax necessarily cuts as large a gash in the bark as it does in the wood beneath, does it not?

A. It does.

Q. Do you not remember that you can stand between the chestnut stump at the Muzzle corner and the poplar that you blocked or cut down and touch the two with your outstretched hands, or nearly do so.

Q. I do not remember as to that.

page 414.] Q. Do you not also remember that the poplar snag is only about twelve or fifteen feet from the other two trees mentioned

A. I am of the opinion that it is a greater distance than that from either of the three trees mentioned to the poplar snag. I can give the exact distances from my diagram.

Q. Do you not *recolect* that no one of these trees was more than about twenty five feet from any other of the group?

A. I am of the opinion that the poplar which I blocked and the down chestnut which had been blocked was within a radius of twenty-five feet but I am of the opinion that the poplar snag and the other down chestnut was more than that distance apart.

RE-DIRECT EXAMINATION.

Q. Did you testify at the Parkersburg trial in the case of King against Mullins as to what you saw at the Muzzle corner, and was not Judge Stiles present when you testified?

A. I did and Judge Stiles was present as I remember.

Q. What circumstance, if any is said to have happened on *Lafayetts* Visit on the Race Fork that causes you to remember him?

A. While out at work a day or two after I saw Lafe Justus Dan Justus and Mose Charles and Reece Davis were in a conversation which I noticed to be very serious and after *comin* from work that evening I asked Mose Charles what the trouble was, he told me that Lafe Justus was accused of raping a woman on the creek just below our camp and on the night that he was up at Dan Justus.

Defendant King moves to strike out the alleged conversation or statement.

Q. Can you say that you were not surveying at Dan Justus hollow on the day that Lafe Justus was at Daniels, between the night you saw him go up and the night you saw him come out.

A. It *wasent* night when I saw him come out. I was not surveying the day that I saw Lafe Justus.

page 415.] And further this deponent saith not

G. S. STONE.

2 days and 290 miles.

It is ordered that these proceedings be now adjourned until tomorrow morning at the same place and between the same hours.

J. T. GRAHAM,
Commissioner.

Met at the office of the Commissioner in the City of *huntington,* pursuant to adjournment on yesterday.

Present the same attorneys as on yesterday.

page 416.] THOMAS J. MATHEWS, a witness heretofore introduced by the contesting defendants, being again introduced by said defendants, after being duly sworn upon oath testified as follows:

EXAMINED

By Mr. Campbell

Q. You have heretofore *testifened* in this case that have been at the Muzzle Corner of the Morris survey. I believe on two different occasions, the last time in company with G. S. Stone, surveyor state what investigations you and Stone made on the question whether or not either of the chestnut trees called for at that corner were marked on the northerly side, state fully all the evidences of that fact you may have found.

A. My recollection is you asked me that question before. My impression now is that the chestnut was marked on the south or little south-west side and also on the north side, but it has been so long ago that I may be mistaken about that I am not so sure about it, but that is the way I think now about it that there was a mark on the *noorth* side.

Q. Was there any part of the *che* chestnut tree still standing in the form of stump?

A. Well the last time I was there there was nothing but a kind of a *shart* pointed sliver off of the chestnut standing, the other had been sawed up and split up. The first time I was there I think the tree was standing, that is my recollection, that was a good many years before that.

Q. On which side of the chestnut did this sliver come from?

A. The part that was standing you mean?

A. Yes.

A. Well it was on the north side, the tree had fell southward and left the sliver on the *noetth* side standing.

Q. Was there any indication or evidence that the chestnut tree referred to had turned in falling or after falling?

A. I dont know about that as you see they had sawed it up and split it up and I dont know exactly how it
page 417.] was—how it might have been before I saw it.

Q. From which side of the tree had the block been taken?

A. I don't know it was all split up and pieces were laying around everywhere and I dont know from which side the block come from. I *dident* see the block at all that they took out.

Q. Did you in conjunction with G. S. Stone make a diagram of the two poplars and chestnuts called for at the Muzzle Corner, showing their relative positions and distances from each other and distance the creek, *aand* if so will you file a copy of the same with the commissioner?

A. Yes we measured the distance from all the trees and between them and the distance from the branch. I have got the notes probably at home I dont know whether I can find them or not. I dont now remember the distance between the trees and the distance of the trees to the creek. Mr. Stone also took notes of the same thing I will undertake to find my notes and if so will send a diagram of the trees to the commissioner.

The defendant King objects to the filing of any notes or diagram by the witness after leaving the witness stand, as by so doing the defendant King is precluded from cross examining him on the subject.

Q. You have been at the stumps in the hollow near Dan Justus house on the Race Fork, the poplar stumps stand about fifty-seven feet apart and the sugar is said to have stood about thirty-four feet from one poplar stump, and twenty-five feet from the other, is there anything inconsistent as evidenced by the distance of those trees apart in that corner, I will ask you to speak from your experience and observation as a surveyor, of forty-nine or fifty years duration or experience?

A. No you frequently see corners, marked trees that far apart. For instance I recall to mind one on the James survey in which there was four trees called for at the mouth of a branch

and one of the trees was on the creek bank above the branch and one below the mouth of the branch and two on the opposite side of the small creek, that was probably further apart
page 418.] than the corner on the Race Fork, although I *dident* measure the distance.

Q. Is there anything inconsistent in the alleged corner at the poplar stumps back of Dan Justus house in the fact that a beech tree stood nearly midway between the lower poplar stump and the sugar tree and a gum stood between six and seven feet above the lower poplar, neither of which beech or gum were called for or were marked. in other words is it any evidence against the existence of the corner that the beech and gum *sttod* as indicated without being marked or called for?

Objected to by the defendant King.

A. No I think not. I frequently find trees in a group that is marked, among the marked trees in a group of marked trees I meant, that is not marked or called for and sometimes find them marked and not called for in surveys. By this statement I mean that I find in a group of marked trees called for as a corner of a survey trees not called for and not marked and sometimes find trees not called for that are marked. For instance I know of a corner tree on Bell creek—corner to the Steel 19000 and 27000 acres and Skyles 40000 acres where there is two sugar trees and a beech called for and right in the middle of the group there is a large white oak that is very plainly marked as a corner and not mentioned in either of the surveys at all.

Q. Where did the beech called for grow with reference to the white oak spoken of and were all the trees marked for all three surveys?

A. The beech grew almost touching the white oak between two main roots that led out from the white oak and the beech was *rater* a small tree compared with the others and they were marked for all of the surveys called for. It was also a corner of the John Barclay 50,000 acres, I forgot to mention that.

Q. Does it occur that trees are some times called for as corners which are not marked?

page 419.] A. Some times in a group of trees that is called for, for you will find some trees of the same kind called for in the group, that are not marked at all, and frequently you will find part of the trees only marked on one side.

Q. When you were at the stumps in question in the Dan Justus hollow did you observe the topography of the surrounding and the immediately adjoining land?

A. Yes I noticed it pretty closely?

Q. Does the line run by Stone from those stumps to the alleged four white oak corner, pass over any ridge or ground of any higher altitude than the corner, between the corner and the right fork of the Race Fork.

A. No I think the corner is the highest point between there and the Race Fork. The line runs down across a little drain or branch and passes over a low flat point but I dont think the point is as high as the corner.

Q. What in your opinion is the elevation of the poplar stumps above the level of the Race Fork?

A. I dont know I had no means of ascertaining that.

Q. Is it in your opinion more than fifty or sixty feet?

Objected to by the defendant King.

A. Well to guess at it I would say it was something more than *than.*

Q. How much more?

A. Well I should think it was at least 100 feet higher than the Race Fork.

Q. Describe the hollow at Dan Justus house and state whether it is a narrow or an open mouth hollow?

A. Well it—there *isent* any level land at the month of it on the side of the creek he lives on. It is *tolerbly* steep drain and Dan Justus lives on the hill side at the mouth of it and one side of his house is propped up seven or eight feet higher than the other side. The place where he lives seems to be a little drain

that runs from a spring, the main drain empties in below his house some little distance I think.

page 420.] Q. Standing at the poplar stumps in question state whether or not you have a fair and open view of the valley of Race Fork for some distance up and down the creek?

A. Yes I think you could see the Race Fork from Dan Justus house and probably a little above it down something about one hundred yards down below his house.

Q. State whether or not standing at the poplar stumps in question you have a plain view for some distance up and down of the basin of the right fork of Race—that is the mountains on either side and the space between them?

Objected to by the defendant King.

A. Yes you could see the opening between the mountains for a considerable distance.

Q. Some opinion has been expressed or intimated by surveyor W. C. Reddy as to the life or duration of ax marks in poplar bark, which do not penetrate to the wood, state what observation or experience you have had as to the life or duration of such marks?

A. Well an ax mark will last as long as the bark *last* whether it goes to the wood or dont go to the wood.

Q. Can you cite any other instances in addition to the case you found at the Muzzle Corner of the *Moris* survey, of the marks in the bark but not in the wood, in that connection state the age of such instances?

Objected to by the defendant King.

A. Well I know of one case out on Poca River in which I run to a poplar corner—a corner to what is *know* as the military survey, that was made in 1173, and a man had cut the tree down and the parties asked me to take the block out and preserve it and mark it so that it could be identified at any time and I took a block out so as to include all three hacks and split it out so as to show the three hacks and the upper *hach* in the tree *dident* go

to the wood and the two lower ones did and I *couldent* see any *differen* in the marks on the tree in the one that *dident* go to the wood and the two that did go to the wood—they were all alike on the tree.

page 421.] Q. How old were the hacks when you took them out—how long had the tree been felled when you blocked it?

A. Well the tree had been marked something over one hundred years. I dont remember how much, the survey had been made in 1773, and the tree had been cut down probably a week maybe not that long—it looked right fresh as if it had been recently cut.

A. Is it practicable or in olden time among the surveyors between 1790 and 1800, in drawing plats on a scale of 1000 poles to the inch, was it customary to attempt, to show short bends in creeks or rivers laid down on their plats?

Objected to by defendant King.

A. Well generally speaking the streams were not laid down very accurately, but occasionally you would find one where the lines run with a stream where they were pretty accurately laid down. But where they merely crossed a stream and the stream was inside of the survey they *dident* know anything about it they just guessed at that part of it. At least that is my experience in resurveying the old tracts.

Q. Was there any purpose or design to conceal the block that was taken out of the poplar tree on or near the line between the alleged four white oak corner and the stumps at Dan Justus?

Objected to by the defendant King.

A. No sir. Not that I know about, I was present if there was anything of the kind I *dident* know it.

Q. Did the marks in that block penetrate in the wood?

A. We *couldent* find any mark in the wood at all—we split it up and examined it very carefully.

CROSS EXAMINATION

By Judge Stiles.

Q. Was the sliver remaining on the root of the chestnut at the Muzzle Corner exactly on the north side or may it have been somewhat east or west or north?

A. Well I am not sure about that it may have been on the west *of* north, it seems to me it was.

Q. It might have been a little east of north,

page 422.] A. Yes sir it might have been.

Q. Is not a distance of merely sixty feet between corner trees of the same corner quite unusual?

A. It is not very common but I have seen it several times that far apart.

Q. Do you not ordinarily find corner trees standing within a much smaller distance of each other than that?

A. Yes, they generally are closer together than that.

A. In the case of the four trees that you instance, standing one on each side of the mouth of the branch and two on the opposite side of the creek did the trees not appear to be selected with a view to making the mouth of the branch come about within the center of the group?

A. Well the call was that these trees was "at the mouth of the branch" and I suppose the mouth of the branch was the objective point.

Q. If your line terminated near a tree which you marked would it not be natural and usual for you to mark the next nearest suitable tree and call for it rather than to go from twice to ten times as far away to mark some other tree?

Objected to by the contesting defendants.

A. I always make it a rule to have one tree marked as a corner and mark the others as pointers, but in the old surveys they *dident* use pointers but marked them all as corners. They usually marked the trees nearest together.

Q. Where a corner tree is called for that is not marked how is it to be identified as a corner tree?

A. Well it *couldent* be identified as a corner tree. In a gen-

eral way I have frequently found corners where there would three or four trees marked and in the group there would be one tree not marked, of the same kind called for.

Q. *Your* are very apt to find other trees of the same kind called for near any group of marked timber in the forest, are you not?

A. You sometimes do find them near the group
page 423.] of trees but not generally right in the group.

Q. Did all the marks on the so called poplar line tree west of the four white oaks' corner show on the bark?

A. Yes there was two marks on each side of it.

Q. None of these had entered the wood you think?

A. None that we could find, we *couldent* find where any marks had entered the wood.

Q. As Stone's line from P to S on the map, approaches the the point E does it not after crossing the Race Fork, cross some elevated ground and some *descending* ground crossing the hollow before reaching the stumps?

A. Yes there is a low point coming down between the Race Fork and the stumps that is formed by the little branch that runs down near the poplars, that branch makes a depression between the little point ridge and the corner—by the corner I mean the stumps.

Q. From those stumps before the ground was cleared in the neighborhood, with all the primeval forest of timber and brush could one get a fair and open view of the creek or the valley between the mountains?

A. Unless there was a good deal of under brush you could see the creek from the stumps at any time but if it was very brushy I dont think you could see the creek.

Q. You *couldent* see any considerable distance in any direction could you, the country around being all timbered?

A. I *shouldent thing* you could get a very clear view of the country—you would know that you were in that depression and could see the outlines of the mountains and that is about all.

Q. Is not *thare* a good deal of brush and undergrowth in

the uncleared hollows and creek bottoms and also on the hillsides in that neighborhood at the present time?

A. Well there generally is but I find it out in the primitive woods where there *hasent* been any clearing or b rning of the woods there is very little brush.

Q. But you find more along in the hollows and

page 424.] in moist ground, than elsewhere, do you not?

A. I find less brush where the big timber is growing thick on the ground, as it shades out the underbrush and there is more underbrush where the big timber is scarce, it makes no difference where it is whether it is on the bottom or on the hill side.

Q. But along the Race Fork at the present time where the land is not cleared do you not find a considerable quantity of brush, and undergrowth and small timber?

A. Yes, there is considerable there now.

Q. Does not the bark of trees continue to grow during the life of the tree, much the same as the wood does?

A. Yes I think it does.

Q. And in the expansion of the bark to accommodate the increased size of the tree within, the outer shell of the bark is very apt to be displaced to a great extent is it not?

A. Yes I think it does in some kinds of timber pretty badly and I suppose it does in most all kinds, except it would be a beech.

Q. Where an ax penetrates the bark and into the wood is there not always or usually a resulting defect in the bark at that point which will continue throughout the life of the bark generally extending from the surface of the wood outward?

A. I dont think it would make any difference whether it went to the wood or *didont* go to the wood as the result would be the same in both cases. From the fact that the bark covers the cut over immediately and the wood forms over the cut and covers it entirely up and leaves it just as though it had never went to the wood. The regular annual growth of the wood covers the cut in the tree and leaves the tree from the cut out to the surface just

as though there had never been any cut in the tree.

Q. Where the ax penetrates through the bark is not the *growth* of the bark from the very inside next to the tree outward, thereby somewhat disturbed and the cut in the bark usually *traceably* through to the wood?

page 425.]

A. No sir. The growth in the bark shows no sign of ax marks from the time it was cut on up to the time you block it out, it makes no difference how long it has been, *there* are just as many growths in the bark as there are in the wood.

Q. The growth of the bark then yearly pushes the mark in the bark further and further away from the wood does it?

A. Yes sir. For every growth in the wood there is a correspondingly growth in the bark but the layers in the bark are so thin that it would take a powerful magnifying glass to disclose them.

Q. If you find a mark of an ax in a thick piece of bark appears to penetrate nearly through it it would *undicate* in a general way would it that no great lapse of time had occurred since making the cut?

A. Well as I told you a while ago I took a block out of a tree that had been marked over a hundred years and one of the marks *didcnt* go to the wood and it was as plain on the tree as the ones that did go to the wood. And more than that I have found trees that were suspected of being corner trees and have chopped in and found the marks on the inside and there *wasent* any sign of a mark on the outside at all.

Q. You measure the growth of a tree from the mark outward and of the bark from the mark inward?

A. Yes sir that is it.

Q. In a general way if you find a mark a short distance from the outside of the wood it would indicate a comparative recent marking of the tree, would it?

A. Yes that would be the general rule.

Q. The same thing would be indicated in a general way where

you find the mark in the bark but a short distance from the wood, would it not?

page 426.] A. Yes. But the bark grows much slower than the wood and it would be impossible to count the growth of the bark without a very powerful glass. I have never seen a glass yet that I could count the annulations in the bark with they were so fine.

Q. Do you not find it the custom of the surveyors along from 1790 to 1800 and in that neighborhood in returning plats of surveys made by them to show with approximate accuracy the course and location of the streams they cross or ran with at the point of contact or crossing, where they actually ran the lines of their surveys?

A. Yes generally right at the points they were accurate.

Q. The residue of the streams and other natural objects referred to you think were shown according to *there* knowledge or notion as to the location and situation of such objects?

A. Yes I think they just guessed at that part of it.

RE-DIRECT EXAMINATION

Q. The annual growths in the bark between the ending of the cut and the wood are exposed are they not to the weather and would there not be in your opinion more or less wearing away of such exposed or outward annulation, or rotting out of them from rain, snow, freezing and thawing and possibly other causes?

Objected to by the defendant King.

A. Yes there might be some wearing away in a case of that kind from the weather and so forth and there might not be, of course. The bark is not as well protected as the inner wood.

Q. Which is the more reliable to show the age of the marks, the bark of the wood.

A. The wood is the most reliable.

And further this deponent saith not.

THO J. MATHEWS.

3 days and 124 miles.

page 427.] The contesting defendants announcing that they had some witnesses at Hurley Virginia, whose depositions they wished to take by consent and agreement between the parties it was agreed that the commissioner should go that *that* place to take the depositions of *sid* witnesses.

And now this the 25th. day of November 1902 met at Hurley, Buchannan County, Virginia, pursuant to the foregoing agreement between the parties.

PRESENT: Counsel for the contesting defendants.

Judge Stiles attorney for the defendant H. C. King.

CURTIS LESTER, a witness heretofore introduced by the contesting defendants, being recalled by the contesting defendants testified as follows:

EXAMINED

By Mr. Campbell.

Q. There seems to be a misunderstanding as to the meaning of one of your answers on your former examination. I will now ask you whether the hollow in which you saw the two poplars and sugar tree marked as corners was above or below the Low Gap Fork of Race?

Objected to by the defendant King.

A. The hollow that I saw them corners in was below the Low Gap Fork.

CROSS EXAMINATION

By Judge Stiles.

Q. When you were examined before down on the Kentucky side of the river opposite Devon do you remember that Mr. Campbell suggested that your answer to the question propounded by me as to how you could identify the hollow where you saw the trees was wrong, and that thereupon the commissioner read over your answer to you and after hearing it read that you stated that it was correct?

A. I said that the trees was in the hollow below the Low Gap

Fork, and that I knew the hollow because me and Pa laid out near it—laid out there and *sanged*.

page 428.] Q. I think you said there was no clearing anywhere in that immediate neighborhood, along the creek or in the hollow where you saw the trees at the time, is that the fact?

A. There *wasent* any clearing there in the hollow there where I saw them trees at the time.

Q. None of the hollows along the creek was cleared out at that time?

A. Not along there as I know of—I dont remember.

Q. I *belief* you were unwilling to come over to Devon to give your testimony, was there any reason for so declining?

A. Well sir I dont know, I heard I was indicted over there and I *dident* feel safe in going over there—*dident* want to go.

Q. What did you understand you were indicted about?

A. I heard I was indicted for a pistol over there, I dont know whether it is so or not, I dont know whether I have been indicted.

Q. You mean for carrying a pistol?

A. Yes sir. I got drunk over there in a saloon one day and pulled one out of my pocket.

And further this deponent saith not.

1 day and 16 miles.

CURTIS LESTER.

page 429.] This the 3rd. day of December 1902, the Commissioner resumed taking depositions, at his office in the city of Huntington, West Virginia, pursuant to adjournment, and by agreement of the parties.

PRESENT: The same attorneys for the contesting defendants and the defendant H. C. King, as heretofore.

GEORGE CHILDERS, a witness introduced by the contesting defendants, after being first duly sworn, deposed as follows.

EXAMINED

By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age 60 years, I live about five miles above Grundy, in Buchannan County, Virginia, I am a farmer.

Q. How long have you lived in that part of the country?

A. About forty years I guess—thirty five or forty.

Q. Where did you live prior to going to the place you now live?

A. I *live* on Conaway Creek, in Buchanan County.

Q. Where were you born and reared?

A. On Conoway Creek.

Q. Did you know R. D Coleman in his life time?

A Yes sir.

Q. Where did he live?

A. He lived on Home Creek.

Q. Were you ever on the waters of Race Fork, of so state when you were there the last time?

A. The last time I was there was about the last of last month, then I was there about forty-four or forty-seven years ago.

Q. Who was with you when you were there the latter part of last month?

A. Levi Lester.

page 430.] Q. Were you at the house of Daniel Justus on the Race Fork at the mouth of a small hollow?

A. Yes sir.

Q. Over what route did you come with Levi Lester onto Race Fork at Daniel Justus house?

A. Well I come up Rock Lick and on to the head of Paw-Paw I reckon of Knox. when down to Riley Dotsons and up Abners Branch to the Race Fork.

Q. Did you pass down the waters of the Low Gap Branch of Race Fork?

A. Yes sir.

Q. Who were with you when you were in there some forty-four or forty-seven years ago?

A. Jacob Lester, John Watkins, Denny Coleman and old Edmond Lester.

Q. Did you ever come over that same route into that same section on to Race Fork, before this last time?

A. I was over there in forty-four or forty-seven years ago.

Q. What were you doing in there at that time with R. D. Coleman and others?

A. I was surveying out some land.

Q. When you were in there this last time in the latter part of November did you recognize any part of the country?

A. Yes sir I recognized a portion of it.

Q. State to the Commissioner what corners or corner trees you remember of running to and from when in there with R. D. Coleman, forty four or forty seven years ago?

Objected to by the *dfedant* King.

A. Well sir I dont recollect but a poplar tree that we commenced on at Denny Coleman's line. I dont recollect exactly where it was now—it was on the left hand side of the branch as you go up, right close to the branch.

Q. Was that poplar corner above the Low Gap Branch, coming in on the right hand side as you go up?

page 431.] A. Well sir I dont recollect whether it was above or below.

Q. Where did you run to from that place?

A. Well sir we run down the branch—just along above the branch a little piece—I dont recollect exactly how far it may have been over fifty yards in some places.

Q. State if you remember what kind of a corner he ran to?

A. It was a white oak and some other timber, I forget what timber it was.

Q. Where did you run to from there?

A. To three lynns.

Q. Where did those three lynns stand?

A. They stood just a little above a cliff, as well as I recollect.

Q. Were they on the same or opposite side from the white oak spoken of?

A. They was on the opposite side of the creek.

Q. When you were there the other day did you see the locality where the three lynns had stood and also the oak corner, that you ran to and from?

A. Yes sir.

Q. Where did you run from the triple lynn?

A. To a dog-wood and something else, down the branch.

Q. Do you remember how far the dogwood corner spoken of stood from the Race Fork?

A. Well it stood about fifty or a hundred yards, I *couldent* tell exactly how far.

Q. Do you remember going anywhere from the dogwood corner spoken of for any purpose, if so state when and where?

A. We went down to a sulphur spring—all of us went.

Q. Where was that sulphur spring?

A. It was on the Race Fork, on the right hand side of the branch as you go up.

Q. On which side of Race Fork did the dogwood corner stand?

page 432.] A. It stood on the right hand side as you go up.

Q. Where is the white oak corner that you ran to from the poplar corner with reference to the house where Dan Justus now lives?

A. Well sir we ran down the right hand side of the branch as you come down and we come to the oak corner, there was other trees but I dont recollect what they was now. The white oak corner was right close to Dan's house it was on the left hand side of the branch as you go up the branch a little below his house, right close to the branch.

Q. Where was the triple lynn corner with reference to where Justus now lives?

A. Well sir they was up on the hill above his house.

Q. Do you remember seeing any marked trees in that hol-

low where Dan Justus now lives, if so state what trees and how they were marked?

A. They *wasent* exactly right in the hollow, they was a little on the side of the point. I seed some—there was a sugar tree and three or four poplars.

Q. How were they marked?

A. Well now we will say that this is the tree, they were marked that way (illustrating), going down the branch towards the sulphur spring—one part was and the other was going down a little below the white oak we cornered on—it looked like from the *was they* was marked.

Q. Do you know how corner trees are marked, if so you may state?

A. Yes sir they are marked with three hacks—the way you come to the tree and the way you run from it.

Q. Was the sugar tree and poplars marked as corner trees?

A. The sugar tree was and the poplars I seed two of the poplars was marked as corner trees, there was two of the poplars marked as corner trees if not more.

page 433.] Q. Where did these trees stand with reference to where Dan Justus house now is and about how far from his house?

A. They were about 150 or 200 yards above the branch where we crossed at the white oak corner.

Q. Who was with you at the sugar tree and poplars that you saw marked as corners?

A. Jacob Lester and Watkins and Denny *Coeleman* and Edmond Lester, they might not have been right there at them but they were along.

Q. Is Edmond Lester and R. D. Coleman, still living?

A. No sir they are both dead.

CROSS EXAMINATION

By Judge Stiles

Q. Had you ever been on Race Fork in that locality prior to

the time you were there surveying forty-four or forty-seven years ago?

A. No sir I never was there before.

Q. You were never there afterwards until last month?

A. No sir the latter part of last month.

Q. What branch of Race Fork did you come down in coming from Paw-Paw?

A. We come down a little hollow I dont recollect its name.

Q. Did you come past Low Gap Branch?

A. Yes sir, we come down one fork of the Race Fork that runs up to the Low Gap.

Q. How do you know that is the Low Gap Fork?

A. Well they said it was.

Q. Who said it was?

A. Denny Coleman.

Q. I refer to the time you came down there last month, did you come past the Low Gap Branch at that time?

A. Yes sir we come right down it—right down through the Low Gap and right down the hollow.

Q. Did you *recognize* that branch by that name when you came down the last time, or did some with you tell you what its name was

page 434.] *Q.* Denny Coleman first told me and then I *recognized* it after we come down.

Q. Did any one live on that branch the first time you were there or does any one live on it now?

A. No sir not where I was, they may have lived down to the mouth of it. There was nobody lived on the Low Gap Branch. There is no one living on the Law Gap now.

Q. Is it cleared or uncleared?

A. It is not cleared.

Q. What tract of land were you surveying?

A. We were surveying out a tract of Watkins and Whites as well as I recollect now.

Q. Of how many acres?

A. I dont recollect how many acres.

Q. About how many acres?

A. I have got no recollection how many acres there was of it.

Q. *Dident* you hear anything said about it at the time of the number of acres?

A. No sir, if I did I dont recollect it.

Q. At what point did you begin the surveying that Watkins and White tract?

A. Well sir I dont recollect.

Q. What were the corner trees of the beginning corner of that tract?

A. I dont recollect that either.

Q. Was this the original survey of the tract or were you retracing the lines of it?

A. We was retracing the lines of a part and a part we *wasent*.

Q. Part of it was the original survey of the tract, was it?

A. Yes sir, part of it was.

Q. Do you remember in what year that surveying was done?

A. No sir I dont.

page 435.] Q. Was it before or since the war of the rebellion?

A. It was before the war.

Q How long before?

A. I cant recollect.

Q. Give your best impression?

A. I dont recollect anything about it, how long it was before the war.

Q. Was that country in Buchanan County, at that time?

A. No sir it was in Tazewell.

Q. How long was it before Buchanan County was created?

A. I dont recollect how long.

Q. You remember about *about* Buchanan County being cut off from Tazewell dont you?

A. Yes sir I can recollect some thing about it.

Q. Cant you recollect how long it was after you were there doing this surveying before Buchanan County was cut off?

A. No sir.

Q. What part of the work were you doing in running this survey?

A. I was carrying the chain.

Q. Did any of the survey lie on Paw-Paw Creek?

A. Yes sir I think so, I aint very well acquainted with country.

Q. Where did you finish the survey?

A. I *dident* help run all of it.

Q. Where was the last corner you ran to?

A. As well as I recollect it was on Paw-Paw.

Q. Where abouts on Paw-Paw?

A. I dont recollect exactly where it is as I was never there but twice.

Q. What kind of trees marked the corner where you finished the surveying that you did?

A. I dont recollect that.

Q. On your last trip to Race Fork did you go
page 136.] to the white oak corner that you have spoken of?

A. I come right by it I *dident* go to the corner.

Q. Was your attention called to it as you came by?

A. Well I knowed where the corner was, they axed me if I knowed where the corner was, Levi Lester axed me. I knowed me if I knowed where the corner was, Levi Lester axed me. I knowed where it was before and showed it to him and he said that was the corner tree.

Q. Did you show it to him before he said anything about it?

A. I disremember whether it was before or after. But I believe he asked me if I knowed where the corner was and I pointed to the tree or the log, it is down, it is blowed up now.

Q How far did you run from the triple lynn to the dogwood corner?

A. I dont recollect.

Q. Give your best impression?

A. Well it was sixty or one hundred sixty poles, and I *dount* recolect which from the lynn to the dogwood.

Q. Did you see the lynns the last trip that you were there?

A. No sir I *dident* see them, I may have seen the stumps of them, I *wasent* right at them.

Q. How far were you from them?

A. Well I dont recollect exactly haw far it was?

Q. Well give a guess?

A. It was 200 or 250 yards somewhere about there I *dident* measure the distance.

Q. How large were those lynns when you saw them the first time?

A. They were small.

Q. How small?

A. *O* dont recollect exactly how small they was.

Q. From what point did you look at them the last time you were in that neighborhood, *of* for them?

page 437.]

A. In the yard at Justus house.

Q. Was that the nearest you went to them?

A. Yes sir.

Q. Where did you go from that place?

A. I come down the creek—down Race Fork.

Q How far down the creek did you go the first time you were there—how far below the white oak corner?

A. Well sir I *dident* go down the creek at all I went around the hill side and down the creek) I went around the hill side the right hand side as you go up.

Q. Were the three lynns marked?

A. We marked them, Coleman did, or some of the hands, I *dident* mark them.

Q. What directions did you mark them?

A. We marked them as we run to them and the way we run from them.

Q. Do you remember what points of the compass that would be?

A. No sir I dont.

Q. Did you notice any other timber near the sugar tree and poplars that you have spoken of?

A. No sir I *dident* notice any other.

Q. How did they stand with reference to each other?

A. The sugar tree was the first we come to—the first one I seed that is and then the poplars they *dident* stand right in a bunch, they sorter stood scattering a little grain.

Q. You mean by that that the poplars stood rather away from the sugar tree?

A. Yes sir they stood a little piece not no great ways?

Q. About how far and in what direction from the sugar tree?

A. They stood right out, they *dident* stand in a row, they stood as if they were here and the sugar tree stood next to me. I run up past them and stopped right *again* them.

[page 438.] Q. What tree stood nearest the sugar tree and how far from it?

A/ I dont recollect now, it was a poplar but I dont recollect how close it stood.

Q. When you came to the sugar tree could you from it see the marks on the other trees?

A/ Yes, sir, on two of them if not some more, I dont recollect how many poplars there were.

Q. How large was that sugar tree?

A. It *wasent* very large.

Q. Can you describe its *appearence*, whether it was sound or rotten, or green or otherwise?

Q/ No sir it was eight or ten inches through, I dont know whether it was sound or rotten. I am just guessing at that I *dident* measure the tree.

Q. Do you remember how the poplar up the branch near the *low* Gap fork was marked?

A. We will say for instance this is the tree, it was marked on that side running down the branch and on this side as *welll* as I recollect now, I dont say that it was at the mouth of the Low Gap hollow or whether it was below or above or right against it.

Q. How was the white oak marked?

A. It was marked right across the branch a little angling up and right the way we run down to it.

Q. How many other trees were there at the same corner with the white oak?

A. I dont recollect.

Q. You never had been at the suphur spring before going from the white oak corner to the three lynns had you?

A. No sir.

Q. Did you stop at the spring when you were there the other day?

A. No sir.

page 139.] Q. Did you notice the spring as you went past it?

A. Yes sir.

Q. By John Watkins who was with you when you did this *Surveyin* do you mean J. N. Watkins a merchant at Grundy?

A. Yes sir.

Q. Who first called your *recolection* to the surveying you have described?

A. Now I believe it was Levi Lester. I recollected a portion of it. I recollected a portion of coming over there to run?

Q. But a good deal you have forgotten had you?

A. I had forgot a good deal of it, yes sir.

Q. Did he refresh your memory about the different corners and localities and where the trees stood?

A. He told me to study about them and see if I could recollect any survey.

Q. Did he point out the cliff up above Dan Justus house where it was said there used to be some lynns?

A. No sir.

Q. Did you recognize that cliff from the creek when you saw it?

A. I *wasent* right at the creek I was up in Daniels yard, I recognized it.

Q. Did you notice the cliff from that point when you were before surveying?

A. Yes sir.

Q. Did you go down and stay over night with Levi Lester the last time you were up on the creek?

A. I stayed all night with him.

Q. He brought you over here did he?

A. No sir he *dident* bring me he come with me.

Q. When did you get here?

A. Monday at eight or nine *oclock* somewheres along there.

Q. And you have been around with him ever since you set out to come here *havent* you?

page 440.] A. Yes sir.

And further this deponent saith not.

his

GEORGE. W. X CHILDRESS.

mark

1 day and 378 miles.

LEVI LESTER a witness heretofore introduced by the contesting defendants, being again recalled, after being first duly sworn upon oath testified as follows:

EXAMINED

By Mr. Campbell.

Q. When Wayne Justus was on the witness stand at Welch being called by Henry C. King, he was asked this question "Who next applied to you to give your testimony, state when that *wwas* and what occurred"? And he gave this *Answer* "Levi Lester was the next one, it was about two or three days just after that, after Justus spoke to me". He came to me and told me that they had my brother and gone with him and that he thought they would go to the penitentiary with him, that detectives had him and if

"I *dident* go and testify to them corners that he was aiming for them to come and take me." I will now ask you whether you applied to Wayne Justus to give his testimony in this case and whether you had the conversation which Wayne Justus mentions in his answer above quoted?

A. I never presumed such a thing to him in my life as that.

Q. Did you ask him to testify or give evidence in the case?

A. No sir I did not.

Q. Did you threaten him in any shape manner or form or have any conversation with him about giving evidence in the case?

A. No sir I never named him giving evidence, there at that time, the time he was speaking of I never named it to him.

Q. Did you at any time or place by any sort of conversation or otherwise scare Wayne Justus into testifying in the case?

A. No sir I never did.

page 111.]

CROSS-EXAMINATION

BY Judge Stiles.

Q. *Dident* Wayne Justus come out to Williamson to testify in company with you?

A. Yes sir he did.

Q. How did he happen to come?

A. He come with Claud Gaujot

Q. Dident you at any time say anything to him about going out as a witness?

A. I will explain *ever* word that was said to him. He come to me at Clells Coleman's store and he took me out to the side of the store house, he asked me where Claud Gaujot was and he said he wanted to see him. I told him I *dident* know where he was but I told him a lie. Well he said if I can get to see him I would like to. Well says I I dont know where he is. I went to Slater and I told him Wayne Justus wanted to see him to see Gaujot, and he said you go back and tell him that Gaujot will meet him at the Commissary store at Hurley at 9 *oclock* the next morning and that is every *work* we talked about it.

Q. *Dident* you tell him any thing about the detective or any one having Dan off some where?

A. No sir I did not. I had reasons that I *dident* want to talk to him more than I did.

Q. Why *dident* you want to talk to him?

A. Why there was just some things that was just connection that had all got tangled up and that is just the reason.

Q. So you lied to him as a short way out of it?

A. I lied to him about Gaujot, yes sir.

Q. You had a suit or a criminal preceeding of some kind over in Grundy for lying to or about some one *dident* you?

A. No sir I *dident*. Not about lying.

Q. What was it about?

A. Well sir it was me and my sister-in law. It was her first kid she had ever found, it was a very dark skinned child, me and my old woman had been down to church and the

page 442.] child, I dont know I expect the child was sick now, and they told it on me that I said it was a nigger child. I never said it was a nigger *childd* but I said it was the darkest *skined* child I ever saw. And they sued me and said I said it was a nigger child but I never said it was a nigger.

Contesting defendants move to strike out the question and answer.

And further this deponent saith not.

his
LEVI X LESTER
mark

page 443.] Met at the City of Huntington, West Virginia, this the 4th day of December, 1902, *persuant* to adjournment.

Present: The same *attorties* as heretofore. The contesting defendants having no other witnesses present, by consent and agreement of the parties, the further taking of this evidence was continued to Saturday, December the 6th, 1902 at the same place.

J. T. GRAHAM,
Commissioner.

Saturday, December the 6th' 1902, met at the same place *persuant* to adjournment on the 4th inst.

Present: No one for contesting defendants.

Judge M. F. Stiles attorney for the defendant, H. C. King.

Thereupon the defendants King, by his attorney protested against the numerous delays in these proceedings occasioned by the contesting defendants and moved the Commissioner that a rule be issued against the contesting defendants to show cause why the taking of evidence on their part should not be closed by a day certain to be fixed by the Commissioner.

It is therefore ordered that the contesting defendants appear before the Commissioner at his office in the city of Huntington, West Virginia, on Monday, December the 8th and show cause if any they can, why the Commissioner should not fix a date certain at which they should close their depositions in this case.

J. T. GRAHAM,
Commissioner.

page 444.] Met Monday, this the 8th day of December, at the office of the commissioner, pursuant to adjournment on Saturday December 6th.

Present: Counsel for the contesting defendants. V. A. Wilder representing the defendant King.

And thereupon the contesting defendants notified the commissioner that they had witnesses present and were prepared to proceed with the examination and depositions, but the commissioner having previously understood that there had been an agreement between the counsel representing the contesting defendants and the defendant, King to take the depositions of some witnesses for the contesting defendants, at Washington, D. C. on the 9th or 10th of December, had adjourned his proceedings until Thursday, December 11th, 1902, and had so notified counsel for defendant King.

It was therefore agreed that the commissioner shall resume his proceedings at his office in the city of Huntington on Thursday, December 11th, 1902.

And the contesting defendants showing to the satisfaction of

the commissioner that there is now pending in the Circuit Court of this county, a motion relating to certain matters contained in the pleading of this case, upon which it is necessary, so far as they are concerned, a ruling of the court should be had, before they will be able to announce when they will rest their case, it was ordered that the matter if fixing a day for the closing of their testimony be also continued until Thursday December 11.

J. T. GRAHAM.
Commissioner.

page 445.] Met, Thursday, December the 11th, at the office of the commissioner in the city of Huntington, West Virginia, pursuant to adjournment on the 8th, inst.

Present: Counsel for the contesting defendant, Judge M. F. Stiles, attorney for the defendant King.

HENRY *BLAMKENSHIP*, a witness introduced by the contesting defendants, after being first duly sworn *deposes an* says?

EXAMINED

By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age 74 years. I live on Little Cub Creek in Wyoming County West Virginia. I am a farmer.

Q. When will you be 75 years of age?

A. On the 11th. day of next March.

Q. How long have you lived on Cub Creek or on the waters of Guyandotte River in that section of country?

A. All my life sir.

Q. Are you acquainted with the mouth of Gilbert Creek, if so how long have you known that part of the country?

A. Yes sir I am acquainted with it, I have known it ever since 58 or 60 years ago.

Q. Were you acquainted with Isaac Spratt in his life time, if so where did he live?

A. Yes sir, he lived at the mouth of Gilbert Creek.

Q. Did you have a married sister who lived on the river below

the mouth of Gilbert Creek, when you were a small boy, if so give her name?

A. Yes sir, her name was Polly Wallace, she married a Wallace

Q. How far did she live from the mouth of Gilbert Creek?

A. Well I cant tell exactly but from a mile and a half to two miles or may be two and a half.

page 146.] Q. You may state if you visited your sister and if so about how old you were and about how long you stayed with her?

A. Yes sir. I was about ten or twelve years old I reckon I expect I stayed a month or maybe a month and a half, with her

Q. While on that visit to your sister were you about the house of Isaac Spratt and the mouth of Gilbert Creek, and if so how often?

A. Well I *couldent* state how often but I was there some three or four times and may be more.

Q. Were you about the mouth of Gilbert Creek any after your visit to your sister?

A. Yes sir.

Defendant King objects to the leading form of the questions.

Q. You may state if you saw any corner trees at or near the mouth of Gilbert Creek, and if so state what kind of timber it was, how many trees and how they were marked and *alll* you *nay* know about it?

A. Yes sir I saw some trees, it was sugar trees that I saw three sugar trees. I saw three trees there marked. I would like to to express how I saw *then* and all about it. I was a boy and I was with this Westley Stafford and he was a boy and then days when boys got together played every place nearly and we was over at his grand fathers Spratts and the old man was below the branch, and he had his ax with him, and this here Westley Stafford, the little boy that was playing with me he got hoid of the ax and was a hacking with it and the old man Spratt told him to put down the ax and not disfigure them trees that they was corner trees

of some big survey he expected. Then I noticed the hacks on the trees.

Defendant King moves to srike out the alleged statement of the remarks of Isaac Spratt

Q. How many hacks did the trees have on them?

page 447.] A. They had six.

Q. How many on a side?

A. Three I think as well as I recollect.

Q. Were all three of them marked the same way?

A. Yes sir

Q. You may state in what directions the hacks pointed?

A. Well I can state the directions of the country, the marks run up the creek and down the river.

A. Where did these three sugar trees stand with reference to the river?

A. They stood some little distance from the river, I think as well as I can recollect ten or fifteen steps.

Q. How far below the mouth of Gilbert Creek, as it then was did they stand?

A. Well at that time they were fifty or sixty yards or mayle a little over, seventy five may be.

Q. What was the *appearence* of the marks on the three sugar trees in respect to age?

A. Well I *dident* pay any attention to that.

Q. Had those hacks been freshly made or not?

A. No sir they had been made it looked like some time and growed over.

Q. Does Gilbert Creek run into the river now at a different place from where it formerly entered the river?

A. Yes sir.

Q. Is it above or below its former mouth?

A. It is below.

Q. How far below in your opinion?

A. It is between fifty and sixty steps.

Q. When did this change in the mouth of the creek occur, if you know?

A. Well I think a part of it occurred in 1862

page 448.] Q. Do you remember when certain French people came and settled on Gilbert Creek

A. Yes sir I remember when they came there.

Q. When was it that you saw the three sugar trees and the marks on them

A. I cant tell you exactly what date, I think I was about 14 years old when I saw them hacks.

Q. Is Westley Stafford referred to by you the same Stafford whose initials are J. W.?

A. Yes sir. ?

CROSS-EXAMINATION
BY Judge Stiles.

Q. How near to these three sugar trees were you when you saw them?

A. I was right close to them.

Q. Was it at that time that you noticed that the marks on one side run down the river?

A. Yes sir.

Q. Was it apparent to you standing by those trees that a line from those marks would run down the river?

A. Yes sir they pointed in that direction.

Q. Did you notice how high the marks were from the ground, if so what were their height?

A. I *dident* notice in particular how high they was, I think they was about the heighth they generally mark timber now in running surveys.

Q. Well about how high is that?

A. About as high as a mans breast, along there.

Q. Had you ever been there before the time you saw these trees?

A. No sir.

Q. Did you ever see them afterwards?

A. Yes sir I saw them afterwards.

Q. When and how long afterwards?

page 449.] A. Well I *couldent* state how long afterwards.

Q. How many times?

A. I *couldent* state that I might have saw them once or twice

Q. What was the condition of the ground in the neighborhood of these trees?

A. Well sir I dont recollect.

Q. Was it cleared where the trees stood or was it not?

A. I think not sir.

Q. How far did they stand from the bank of the creek?

A. Well they stood then from sixty to seventy five yards.

Q. They stood, I understand you on the bank of the river?

A. Close to the bank of the river.

Q. Were there other trees or brush close by or did they stand by themselves?

A. There was other trees standing around them.

Q. How near?

A. I *couldent* state.

Q. Did you make a careful inspection of the trees and the marks at the time?

A. *No* sir.

Q. How did you happen to notice or remember in what direction they were marked?

A. Well I had seed corner trees marked and the old man Spratt told the boy they were corner trees and I noticed them for the mark and *seed* the mark on them.

Q. Did you walk clear around each tree?

A. I dont recollect that I walked clear around I walked far enough to see which way they were marked.

Q. Is it not a fact that the marks on one side pointed up the river so as to cross the creek near the mouth?

A. No sir.

Q. How far was it from the trees to the nearest cleared ground and on which side of the creek was the cleared ground?

page 450.] A. Well it was a hundred yards or over and the cleared *groun* was on the upper side of the creek?

Q. How far did the trees stand from Isaac Spratts house?

A. Well between seventy five and a hundred yards.

Q. What were you and West Stafford doing, when you saw these trees?

A. We was just a playing at his grandfathers over where the old man was a chopping wood, or doing something he had an ax there and was chopping or doing something with it.

Q. Have you since that time or about that time seen any other marked corner trees except corner trees of your own land?

A. O yes sir.

Q. Where?

A. I have seed different places. I helped carry a chain and run out several surveys.

Q. Do you remember the trees of any particular corner of those surveys

A. No not in particular.

Q. How do you fix the time when you say there was a change in the course of Gilbert's Creek at its mouth?

A. Well I *dident* say it was done in a certain time. It was commenced in 1861 or 1862 and in 1875 it done its big wash out.

Q. How much did it change in 1861 or 1862?

A. Well I *couldent* tell exactly.

Q. How much did it change in 1875?

A. I *couldent* tell exactly that.

Q. How far did you live in those days from the mouth of Gilbert Creek?

A. About eight miles sir.

Q. How did these three sugar trees stand with reference to each other?

page 451.] A/ Well they stood pretty close together, all three of them

Q. How large were they?

A. Well I *couldent* state how *gig* they was.

Q. State as near as you can in inches?

A. Well they was common sized sugar trees, a foot or fifteen inches maybe.

Q. Was it before or after the Frenchmen came there that you saw these trees and how long before or after

A/ I saw them a right bit before they moved there, I *couldent* state exactly how long but about ten or fifteen years.

Q. About what year did they come there?

A. I *couldent* state exactly.

Q. *Wasent* it in 1846?

A. I *couldent* state, I think it was some time in 1840s but I *couldent* state what time

Q. Have you ever testified in any of the King cases before?

A. No sir.

Q. You have been acquainted have you not with the litigation going on over the Morris grant for a great many years?

A. Yes sir I have.

Q. You have been a defendant in some of the suits have you not?

A. I dont recollect that I have sir.

Q. *Havent* you been served with process in some of them?

A. I dont recollect that I have, I might have been but if I have I have forgot it.

Q. Were you a defendant in the suit brought by Randall sometime before the War?

A. I dont think I was sir.

Q. Do you remember when a receiver appointed by the United States Court—Captain Peyton, in one of the King suits about three or four years ago, took charge of some timber at or near the mouth of Leatherwood Creek?

page 452.] A. No sir I dont recollect anything about it.

Q. Dont you remember some shooting that was

dont at the receiver at that place while he was branding timber?

A. Yes sir I recollect of hearing it talked of. I dont know the particulars of it.

Q. Were you not one of the parties that did the shooting?

A. No sir, I have never engaged in the like of that since the war.

Q. Were you not in the crowd at that time, who did the shooting?

A. No sir, if I had of been it wouldent have been done I *dont* suppose if I could have helped it. You have got the *mean* Henry Blankenship in that, there is two or three up there. I suppose the one that did it is what we call Stumpy Henry, that is what i heard, I dont engage in any such.

Q. Are you acquainted with Island Creek that comes into Guyandotte River at Logan Court House?

A. I have been on it several times.

Q. Did you ever hear among the old people about its having been known by a different name in early days?

A. No sir I dont recollect that I ever did. I have heard it talked of since this here thing has gotten up, that that was the report but I never heard it.

And further this deponent saith not.

4 days and 290 miles.

HENRY BLANKENSHIP.

page 453.] LEVI BLANKENSHIP, a witness introduced by the contesting defendants, after being first duly sworn upon oath testified as follows.

EXAMINED

By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age from the best information I can get I am about 66 years old a little past, I live in Wyoming County on the *we the* waters of Little Huff Creek, on Little Cub Creek and am a farmer.

Q. What relation are you to Henry Blankenship, the witness who has just testified?

A. I suppose I am his brother sir.

Q. Were you brought up in the same neighborhood where he was

A. Yes sir, both of the same family.

Q. Were you about the mouth of Gilbert any when you were a boy, if so what were you doing there?

A. I was there one time when I was a small boy, I went there with my mother to meeting.

Q. About how old were you at that time?

A. Well sir I *couldent* exactly tell some eight or nine years old I suppose.

Q. How long did you stay there on that occasion?

A. It strikes my mind that we went there in the morning part of the day, before noon some time, we stayed there *til* the next morning—stayed all night.

Q. While there on that visit did you see any corner trees if so, state how many and what kind of trees?

Objected to by the defendant King as leading.

A. I *seed* three sugar trees, said to be corner trees, [the old man Isaac Spratt said they were corner trees.]

Defendant King moves to strike out the alleged statement of Spratt.

Q. How close were you to these three sugar trees?

[page 454.] A. Well sir I *couldent* just exactly state but I suppose I was very close to them.

Q. Where did they stand?

A. They stood below the mouth of Gilbert Creek rather on the bank of the river in the end of a bottom.

Q. About how far from the river?

A. I *couldent* tell now, I was quite small, not very far though.

Q. About how far did they stand below the mouth of Gilbert Creek at that time?

A. Well sir I *couldent* hardly say, it has been so long ago and I was quite small.

Q. Did you see any marks upon these three sugar trees, if so state how they were marked?

Objected to by the defendant King, as leading.

A. I did. My recollection is there was three hacks on a side

Q. If you remember you may state in what direction the marks poinated?

A. I cant state in what direction, the way I come to see the hacks on the Sugar trees old Mr. Isaac Spratt and his son and I suppose his grand son started after *after* a load of wood, the old man Spratt told the boys, let us go after a load of wood and my mother told me to go with them. We got down there and got to throwing rocks at those trees and the old man Spratt scolded the boys, told them to quit throwing rocks at those trees, he said he supposed they were a corner trees of some big survey,

Defendant King moves to strike out all the alleged statements of Isaac Spratt.

Q. Were all three of the sugar trees marked in the same way?

A. I *cant* state whether they were or not but I little believe they were.

Q. How many hacks were there in a place on the trees?

A. It strikes my mind sir there were three on a side, not directly through the center of the tree but were about

page 455.] a quarter way around.

Q. How many hacks on each tree?

A. I *cant* state exactly, only the one we was a throwing at there was three hacks on each side, six hacks on the tree that is all I know

Q. Were the hacks fresh or old in *appearence?*

A. They were old in *appearence*, we made some of them hacks spots to throw rocks at until the old man Spratt stopped us. We went to the house then and I dont know anything more about the corners, that is all I know, if I ever seed them any more I dont have any recollection of it sir.

Q. Does Gilbert enter the river now where it did when you first knew the creek?

A. I dont think it does sir.

Q. In which direction has the mouth shifted, up or down?

A. Down the river.

Q. About how far down?

A. Well sir my opinion is from the lower edge of the creek where it empties into the river now must be some fifty or sixty yards from where I think it did run in.

Q. You may state if you remember when the change in the mouth of the creek took place?

A. Well I suppose at various times.

CROSS-EXAMINATION

BY Judge Stiles.

Q. How many trees did you throw stones at?

A. One is my recollection.

Q. And you threw at the marks on the trees?

A. Yes sir. Till the old man Spratt scolded his boys.

Q. Did you go up and look at the tree after he stopped you from stoning it?

A. I dont just recollect. Before that we would throw what we call matches about three stones a piece and then we would go up to see who beat.

page 656.) Q. Did you throw stones at both sets of marks on this tree?

A. I dont *recolect* that we did.

Q. Can you tell how large those marks were, how long or how wide or how deep?

A. They was small marks sir in length, they might have been some two inches or a little over wide.

Q. How large was the tree?

A. Why it strikes my mind that it was a right smart sized tree. They must have been a foot and a half or two foot through, that is my recollection.

Q. Did Spratt's son and grand son appear to know anything about there being any corner trees there before the old man stopped you from throwing stones?

A. The two Spratt boys *dident* say anything to me about those

being corner trees at that time, before we commenced throwing at them.

Q. Did you know what the marks meant before the old man *said* any thing?

A. I did not sir.

Q. You *couldent* at that time tell whether the tree was marked as a corner tree or not could you.

Q. Yes I suppose I could. I had seed other corner trees that my father had told me was a corner of his land. The sugar tree that we was a throwing at was marked just like his corner trees was, three hacks on a side.

Q. Where were his corner trees that he showed?

A. On his land on Big Cub Creek.

Q. What kind of trees and how many were they?

A. I *couldent* tell you how many, there was a poplar down at the lower end of his land below his house, stood on the foot of a hill. He cautioned me not to hack on that tree as it was a corner to the lower end of his land.

page 153. Q. How old did you say you were at the time you were throwing stones at this tree?

A. I dont just know sir some eight or nine years old I suppose about that age.

Q. After Spratt stopped you you and the other boys turned away and went to the house did you?

A. Yes we took a load of fire wood and went to the house right after the old man Spratt.

Q. Up to the time he spoke to you had you paid any *attention* to the tree to notice whether it was marked *at* other wise different from other trees.

A. Why when we commenced throwing rocks at it I noticed those three hacks on that side *wardse* we were throwing rocks at it, making it our spots to throw rocks at and in gathering up my load of wood I walked around it, as it seemed like I was a little ashamed of what I had done and I noticed three hacks more on the other side of it.?

Q. But did you before Spratt spoke of it think anything about it as a corner tree?

A. I did not.

Q. Did you go and examine any other trees than the one you threw stones at?

A. I did not sir, that I recollect of.

Q. Are you positive from your own recollection and independently of anything you have heard since that day that that was a sugar tree or that there was more than one marked tree?

A. O I know that that was a sugar tree, I was old enough to know a sugar tree from any other tree.

Q. And you continue to be positive after sixty years but do remember distinctly that it was a sugar tree and not a poplar or an oak that you threw stones at?

A. Well sir I think it was a sugar tree, I am positive of it.

page 1552a. Q. Were there any other sugar trees around the neighborhood of the creek at that time?

A. Yes sir, some stood *interlocked* close around.

Q. *Can* you state how near the bank of the creek this tree stood to that you threw stones at?

A. No sir I *can* state.

Q. Was there any other timber than sugar trees around there

A. Yes sir I suppose there was. My recollection that the load of wood that I taken to the house was a dead beech wood, or some other dry dead like wood.

Q. Was the ground there a cleared field or *woods* it in timber?

A. My recollection it was what we call woods land, if there was any cleared land there I dont recollect it at this time.

Q. Did you take any special notice of how the creek ran in the river at that time?

A. It seems to me that run with a kind of a curve up the river like and emptied in.

Q. What circumstances if any enables you to say that there has been any change in the course of the creek at that place?

A. The old man Spratt's house, as my recollection, stood on

an elevated piece of ground that made what I call a bank down to the creek and the creek ran around that bank like and made a curve into the river.

Q. How many times were you at old man Spratts place when you were a boy after you saw this tree?

A. I *couldent* state, several times though.

Q. What were the names of the son and grand son of *Isaac* Spratt who were with you when you were throwing stones at the tree?

A. Alex Spratt, who was I suppose his son, and Pat Spratt, *his* grand son.

page 158.] Q. How old were they at that time?

A. I *couldent* tell you sir.

Q. Were they older or younger than you?

A. My recollection is that *Elex* Spratt was a little the largest and Pat Spratt and me were about the same size. Alex Spratt is dead. Pat Spratt is living.

And further this deponent saith not.

LEVI BLANKENSHIP.

4 days and 290 miles.

JACOB KLINE, a witness introduced by the contesting defendants after being first duly sworn upon oath testified as follows.

Q. State your age, residence and occupation?

A. Age about 66 years as well as I can get at it, I live in Wyoming County, and am a farmer

Q. Where were you born and raised?

A. I was born and raised on Gilberts Creek?

Q. How far up from the mouth?

A. About four miles.

Q. Does Gilbert Creek enter the river now where it formerly did when you first knew the creek?

A. No sir.

Q. How far has it shifted its mouth?

A. Well some fifty or sixty yards.

Q. Lower down the river than it formerly was?

Q. Yes sir.

Q. When you were a little boy did you know old man Isaac Spratt at the mouth of Gilbert and his son Alex and grand son Pat?

A. Yes sir.

Q. Did you ever see any corner trees at or near the mouth of Gilbert Creek, if so what kiad of trees and where

page 458*a*.] were they?

A. Yes sir I say corner trees there. They was down from the mouth of Gilbert, they were sugar trees.

Q. How many?

A. Three.

Q. How far in your opinion were they from the river?

A. Well sir I *couldent* tell point blank how far, they was fifteen steps I reckon.

Q. How far below the present mouth of Gilbert Creek?

A. It was just on the other side of the creek as well as I recollect.

Q. How come you to notice these three sugar trees?

A. I went across there with Mr. Spratt after a load of sugar water and he showed them to me.

Q. Were the three sugar trees tapped aad running sugar water

A. Yes sir.

Q. If you remember you may state how they were tapped?

A. They was tapped with augers, a big auger and a small one.

Q. How many hacks were there on each tree?

A. There were six on a tree, three on each side.

Q. If you remember you may state in which direction the hacks pointed?

A. The hacks on the lower side of them down the river and the other ones quartering across Gilbert.

Q. About how old were you when you first saw the trees and marks on them?

A. Well sir I dont know how old I was I *couldent* tell.

Q. Were the marks fresh or old?

Q. They looked like they was old marks.

CROSS EXAMINATION

By Judge Stiles.

Q. Tell us as near as you can how old you were?

A. I must have been seven or eight years old.

Q. How was the sap saved from the auger holes in the trees

A. *O* I dont know. O yes there was a little

page 459.] spout under that big auger hole, there was bored a big auger hole in that way and in that hole there was bored a little auger hole and a little spile put in.

Q. Were there a good maay sugar trees around in that immediate locality?

A. No sir.

Q. How many were there?

A. I dont know sir how many.

Q. How many did Spratt have tapped?

A. I recollect of five or six.

Q. Had those trees been tapped before, year after year?

A. No sir I dont recollect of seeing them tapped but at that one year.

Q. Did you notice any old holes or cuts where they had previously been tapped?

A. No sir.

Q. Did Spratt show you any trees but the three?

A. No sir not as I recollect of.

Q. How did you happen to notice how they were marked, what interest was it to you?

A. Sir I just. Mr. Spratt. I was there and he said something about the sugar trees being marked.

Q. Did you then get in line to see how they ran?

A. I looked at the marks.

Q. Did you look for the purpose of determining in what direction those marks indicated that lines had been run?

A. I just happen to look at them and he got to telling me about them.

Q. You say one set of marks pointed down the river, did you notice that at the time, or have you learned that since?

A. Yes sir I noticed it at the time.

page 460.] Q. Could you stand there by the tree and see that a line from those marks and the river would run in the same direction?

A. Yes sir.

Q. Was Spratt related to you in any way?

A. No sir.

Q. What were you doing down there?

A. I went down there to play with the boys.

Q. How far did you live from there?

A. About four miles.

Q. How far did these trees stand from the mouth of the creek at the time you saw them?

A. O they stood fifty or sixty yards.

Q. Was that timber land where the trees stood or was it cleared?

A. It was timbered land.

Q. Was there any cleared land around there?

A. Not right there, *aboave* his house there was land cleared.

Q. That was on the other side of the creek?

A. Yes sir.

Q. Did you ever see the trees more than once?

A. I did.

Q. Before that?

A. After that?

Q. How long after that?

A. I *couldent* say how long, it might have been a month.

Q. Was it any longer than that?

A. No I dont think it was.

Q. *Dident* you ever see them more than a month after that?

A. I dont recollect whether I did or not.

Q. *Dident* you see them as much as five or six years after that.

A. I dont recollect that I did, or not

page 461.] Q. Do you not remember that they were standing there five or six years after the time you first saw them?

A. Dont recollect.

Q. Were you there about the mouth of the creek five or six years after wards?

A. Yes sir.

Q. You *dident* notice the trees then whether they were there or not?

A. No sir I *dident*.

Q. At what point would a line drawn from the other mark cross Gilbert Creek?

A. It would have went across towards the point there on the upper side of Gilbert.

Q. How did the trees stand with reference to each other?

A. They stood four or five feet apart and maybe six.

Q. Were they in a row or how?

A. No sir. They was one a standing out there and another one there and another one over here. (here witness *illustraces* the position of the trees as standing in the form of a triangle)

Q. How large were they?

A. O I *couldent* tell how large they was right smart trees. They might have been a foot or over through.

Q. Did you say they stood close to the river bank?

A. They stood, I forget, I *couldent* tell point blank how far it was, they might have stood twenty five feet.

Q. Are you sure you were as old as seven or eight years at the time you noticed *there* trees?

A. I think I was.

Q. Could you have been ten or twelve years old?

A. No sir I dont think I was.

Q. How long have you *know* of the so called King suit respecting the Morris grant?

A. O I dont know—it has been not more than four or five years since I recollect anything about it.

page 462.] Q. *Dident* you know about the trials that were being had at Parkersburg, heard *peiple* talking about it?

A. Yes sir, I heard people talking about it.

Q. Did you hear of the trials at the time they were going on

A. Yes sir.

Q. When did you first mention to any one that you had seen these trees that you speak of?

A. O I dont know that I ever mentioned it until a few days ago.

Q. To whom did you mention it a few days ago?

A. I went *douw* to the mouth of Gilbert and me and Dock Stafford was talking about it.

Q. Did he show you where the trees was supposed to stand?

A. No sir.

Q. What did he tell you about it?

A. He just *axed* me if I knowed any thing about it.

Q. Did you ever hear anything said among the old people when you were a boy or at any other time, prior to the institution of this suit, about Island Creek, being known by some other name?

A. No sir I never did.

Q. Or of any of the creeks having had their names changed?

A. No sir I never did.

And further this deponent saith not.

his

JACOB x KLEIN.

mrk

4 days and 290 miles.

page 462*a*.] met at the city of Huntington, West Virginia, this the 4th day of December, 1902, *persuant* to adjournment.

Present: The same *attornies* as heretofore. The contesting *defendents* having no other witness present, by consent and

agreement of the parties, the further taking of this evidence was continued to Saturday, December the 6th, 1902, at the same place.

J. T. GRAHAM,
Commissioner.

Saturday, December the 6th, 1902, met at the same *place pursuant* to adjournment on the 4th inst.

Present: No one for contesting defendants.

Judge M. F. Stiles attorney for the *defendent*, H. C. King.

Thereupon the *defendent* King, by his said attorney protested against the numerous delays in these proceedings occasioned by the contesting *defendents* and moved the Commissioner that a rule be issued against the contesting *defendents* to show cause why the taking the evidence on their part should not be closed by a day certain to be fixed by the Commissioner.

It is therefore ordered that the contesting *defendents* appear before the Commissioner at his office in the city of Huntington, West Virginia, on Monday, December the 8th and show cause if any they can, why the Commissioner should not fix a date certain at which they shall close their depositions in this case.

J. T. GRAHAM,
Commissioner.

page 1672*b*.] Met Monday, this the 8th. day of December, at the office of the commissioner, pursuant to adjournment on Saturday December 6th.

Present: Counsel for the contesting defendants V. A. Wilder represeating the defendant King.

And thereupon the contesting defendants notified the commissioner that they had witnesses present and were prepared to proceed with the examination and depositions, but the commissioner having previously understood that there had been an agreement between the counsel representing the contesting defendants and the defendant, to take the depositions of some witnesses for the contesting defendants, at Washington, D. C. on the 9th. or 10th. of December, had adjourned his proceedings until Thursday, Decem-

ber 11th. 1902, and had so notified counsel for the defendant King.

It was therefore agreed that the commissioner shall resume his proceedings at his office in the city of Huntington on Thursday, December 11th. 1902.

And the contesting defendants showing to the satisfaction of the commissioner that *that* there is now pending in the Circuit Court of this county, a motion relating to certain matters contained in the pleading of this case, upon which it is necessary, so far as they are concerned, a *ruling* of the court should be had, before they will be able to announce when they will rest their case, it was ordered that the matter of fixing a day for the closing of their testimony be also continued until Thursday December 11.

J. T. GRAHAM,
Commissioner.

page 463.] Thereupon the contesting *defendants* announced that they desired to take the deposition of the honorable Joseph M. Saunders at Welch on tomorrow, Friday December the 12th and moved the commissioner to go to that place and take said deposition. And thereupon it was agreed between counsel for the contesting *defendants* and counsel for the *defendant* H. C. King that the statement of the Honorable Joseph H. Sanders, contained on pages 129, 130 and 131 of the printed record in the case styled "STATE OF WEST VIRGINIA, plaintiff below *defendant* in error, vs. MAYNARD F. STILES, *defendant* below, plaintiff in error," lately pending in the Supreme Court of Appeals of the state of West Virginia, may be inserted herein and adopted as the evidence of the said Joseph M. Sanders, subject however, to the objection of the *defendant* King, to its relevancy and materiality as herein after set forth.

The said statement is as follows:

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Honorable Joseph M. Saunders, Judge of the Court, and presiding on this case, at the request of the attorney for the State, certifies to the Stenographer the following:

At the March Term, 1897, of the Circuit Court of Wyoming

County,—it being the first term of the court held by me in said county—the case of the State against Cooper and others, to the best of my recollection is the correct style of the case, was called up, and it was made known to me—or suggested, rather,—that some of my relations were parties to the suit or would be, probably, interested in the result of the case, and an order was asked removing it to the Circuit Court of *Kanawaha* County. And at the same Term, and at the same time, the case of the state against King and others was called up, and some member of the bar, I don't remember now who, though it was probably C. M. Turley, Esq., suggested to me that some of my relations would be, if they were not then,

parties to the suit of the State against King and
page 164.] others or *or* probably be interested in the result of
that case; and at that time I suggested to the members of the bar who were interested in the result of that case: and at the time I suggested to the members of the bar who were interested in that case that it would be just as well to remove that case to the Circuit Court of Kanawha county at that time, and Mr. H. K. Shumate, who I then understood to be representing Henry C. King, stated that he preferred not to have the case removed at that time. Then at the September Term, 1897, of the Circuit Court of Wyoming County the case of the State of West Virginia agaiast Henry C. King and others was submitted to me by Colonel Childers, who represented that he was then representing the State as its attorney, Mr. J. R. *Robertson*, Commissioner of school Lands of this County at that time; H. K. Shumate, attorney for Henry C. King, and a gentleman whom I didn't know, but who was introduced to me as Colonel Wilder, I believe is the name. And at the time of the presentation of the case by the

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gentlemen named for a *degree* allowing Heary C. King to redeem, I made inquiry of the gentlemen as to whether or not that was one of the cases in which it had been suggested to me that some of my relations were probably interested. The response was that my relations had no interest in that suit. I don't remember who made that response but it was made by some one of the gentlemen named,

who presented the case—may be more than one of them,—and they all seemed to acquiesce in that statement. Then I asked the question if there was any controversy in the case. The response was there was no controversy in this case. I think that response came from several of the gentlemen there, but I don't remember now and won't undertake to say certainly about that,

page 465.] but I, of course, addressed my remarks particularly to the attorneys in the case when I made that inquiry, and whether they both responded or not I inferred from what they said and from what they did in the matter that there was no controversy in it: that was the assurance given me by their actions and by their words on that occasion. Nobody present at that time even intimated to me in the slightest degree that there was any controversy in the case or that there ever had been. Then I asked the State—the attorney who was representing the Commissioner of School Lands at that time—if he was willing that Henry C. King be allowed to redeem, and he said that he was. I asked the Commissioner of School Lands about the same question, and he said that he was. I made a slight examination of the papers and some changes were probably made in the decree, and the decree was directed to be entered. I didn't give the papers as careful examination as I would have done if there had been any intimation to me that there was any controversy in the case.

Mr. M. F. Stiles:

I would like to ask your Honor, if you are willing to certify

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that I was not present at Wyoming Court at the March Term or the September Term thereof?

By the Court:

The *defendent is* this case, M. F. Stiles, as I now recollect, was not present at the March Term, 1897, and I am quite sure that he was not present at the September Term of the same year.

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page 466.] Thereupon the *defendent* H. C. King by his attorney objected to the foregoing evidence of Joseph M.

Sanders on the ground that the same is immaterial and irrelevant, and moved that the same be stricken out and not considered as evidence.

No other witnesses were introduced by the contesting *defendents*.

The contesting *defendents* in answer to the requirement of the commissioner upon the question of fixing a day for their *closin* their testimony stated that they had two additional witnesses upon matters not affected by the motion now pending in the Circuit Court, whose testimony they expected to take, and thereupon the commissioner fixed and designated Saturday, December the 20th 1902, as the day upon which the contesting *defendents* must close their case upon all matters herein not affected by the said motion in court, and the contesting *defendents* given until that date to bring before the Commissioner such witnesses as they may desire.

It is ordered that these proceedings be now adjourned and continued until Monday, December the 15th 1902.

J. T. GRAHAM,
Commissioner.

page 466*a*.] Z. T. VINSON another witness on behalf of the contesting defendants, after being first duly sworn, upon oath testified as follows:

EXAMINED
By Mr. Campbell.

Q. I hand you herewith a deposition *give* by you before whom T. W. Taylor, a notary of Cabell County, on the 17th day of March, 1898, taken in the case of yourself, as Receiver, against H. C. King and others, now pending in the Circuit Court of the United States for the Southern District of West Virginia, and I will ask you if you have carefully read over the questions and answers contained in that deposition, today?

A. Yes sir, I have.

Q. I now propound to you the same questions as contained in

that deposiion mentioned and ask you to answer each of same?

To each of which questions the defendant King by counsel objects.

A. For answer to the foregoing question I file a copy of the depositions as part of my deposition now and adopt the same answers therein propounded on examination in chief and cross examination, which is in words and figures following, to-wit:

By the Commissioner: The deposition referred to by witness is as follows:

"Z. T. Vinson, the plaintiff, being first duly sworn, on his own behalf, deposes and says as follows:

DIRECT EXAMINATION.

Q. State your name, age, residence and occupation.

A. Forty years old, reside in Huntington, occupation lawyer.

Q. When were you appointed receiver of the property of Alexander McClintock & Son?

page 467.] A. September, 1893.

Q. Did that appointment embrace the DeWitt Clinton survey of 142,000 acres lying in below the part of it belonging to McClintock?

A. It embraced all the property that Alexander and John McClintock as a firm, as well as individuals, owned and they at that time owned a portion of the DeWitt Clinton survey.

Q. After your appointment as such receiver, what steps did you take to protect the property so placed in your hands, particularly in reference to his interest in the DeWitt Clinton survey, and what did you find?

A. When I was appointed Receiver, there was a suit pending in the circuit court of Logan County against the McClintocks (Counsel for the defendant here objects to the testimony as immaterial) respecting the DeWitt Clinton survey brought by the State of West Virginia, seeking to sell the land for the benefit of the School Fund. This suit had been prosecuted to the extent of the reference to a commissioner of the circuit court of Logan County and a report had been made reporting certain pieces of land sub-

ject to be sold and a decree of sale had been entered in that report. Mr. King, through his counsel, had also filed a petition or answer in the case, claiming title to the land. Sometime after I was appointed receiver (I do not now remember how long, I removed the case from the circuit court of Logan County into the Circuit Court of the United States, at Parkersburg, where it is now pending. Mr. King filed another petition or answer in the Circuit Court of the United States, after its removal there, claiming the land in controversy as his. At March Rules, 1895, King instituted an action of ejectment against McClintock, Mullins and various others, and I appeared in those suits and defended them in the Circuit Court of the United States, and a trial was had in January, 1896, resulting in a judgment for the defendants, in February, 1896. From this judgment an appeal was taken to the Supreme Court of the United States by Mr. King, where the case is now pending. The interest of McClintock and myself as Receiver representing his estate, that was involved in the various school land proceedings in Logan and Wyoming counties, I placed in the hands of Mr. Sheppard in the matter in Wyoming county to represent McClintock's interest as well as my interest as receiver. A petition or answer, in the nature of a plea, denying the jurisdiction of the Circuit Court of Wyoming County to adjudicate upon the rights of McClintock and myself as receiver, was filed by McClintock, which suit afterwards became the subject matter of the stipulation spoken of by Mr. Sheppard. After the ejectment causes had been taken to the Supreme Court of the United States, Judge Stiles was anxious to have the case submitted in briefs without oral argument and under the rule allowing such submission to take place within ninety days after the appeal had been perfected, provided that both sides should sign a written stipulation to that effect. When he approached me with this proposition, he had conferred with Mr. Sheppard before speaking to me and I had a talk with Mr. Sheppard and he suggested that we would not make that agreement with Mr. Stiles, unless the proceeding in the Wyoming County Court should be held up until after the decision of the Supreme Court. I deferred in that mat-

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ter to Mr. Sheppard's wish, as he had had control of the Wyoming County matter and knew more of the situation than I did. Sometime in November, 1896, Judge Stiles and Mr. Sheppard met me in Huntington and an arrangement was finally *consumated* by which the case pending in the Supreme Court of the United States was to be submitted in briefs without oral argument, and in the meantime the Wyoming matter was to be suspended.

page 469.] Before the writing was reduced to writing, however, I was called away and a few days afterwards I received from Judge Stiles a copy of the agreement as we had made it. After receiving that agreement I paid no further attention to the matter in the Wyoming Court, although my partner, Mr. Thompson, attended nearly every term of that court since that agreement was entered into, and the first intimation that I had that it had not been kept, was through Mr. Sheppard, who notified me shortly after the decree of redemption complained of and the original bill in the case was immediately prepared and filed. At the time the bill was drawn I was sick in bed and depended upon Mr. Sheppard, together with his co-counsel, Campbell & Holt, to take such steps as my interest as receiver and McClintocks interest demanded.

Q. Can you state whether your partner W. R. Thompson attended the Wyoming circuit court, 1897, at which the decree of redemption was entered?

A. I am not positive. We had several matters pending in the Wyoming circuit court that required Mr. Thompson's attention at that court and I do know that he went there at the various terms of court after the date of this stipulation, but whether he was in attendance at that particular term or not I do not know.

Q. What reliance did you place upon that written stipulation in reference to the Wyoming County case?

A. I relied absolutely upon it, that there would be no steps taken in it until after the matter had been in the Supreme Court had been disposed of, according to the terms of the agreement.

Q. State if you had any notice, knowledge or intimation, from

any source whatsoever that any steps were being taken in that case after that agreement had been entered into or were expected to be taken.

page 470.] A. I had no notice, knowledge and no information or intimation that any steps were being taken in that case whatever after that stipulation was entered into, and the first intimation or information that I received was, after the decree of redemption had been passed when Mr. Sheppard informed me as above stated.

Q. Have you read the original amended and supplemental bills in this case?

A. I have,—that is, I read the amended and supplemental bill before it was filed and the original bill after it was filed.

Q. There are some additional allegations in the amended and supplemental bills not found in the original—why, if you know, were they not put in the original?

Q. The only reason I can give for their omission is, that at the time the original was drafted, I was sick in bed and asked the counsel in the case to draw the bill as best they could under the circumstances; that I was not able to give it any attention, but I do not think I saw that bill until after it was filed and after it had been removed from the Wyoming court to the Federal court (Counsel for the defendant here objects as immaterial, the court having permitted the supplemental bill to be filed, that I suppose will dispose of it.)

Q. What connection have you with the case pending on writ of error in the Supreme Court of the United States, wherein Henry C. King is plaintiff in error and Alexander McClintock and others defendants in error?

A. I have been counsel in the case, so far as McClintock & Son are concerned since the case was brought and am still counsel in it.

Q. Was that case in writ of error submitted within the first ninety days without oral argument?

A. It was.

page 471.] Q. Did the Court require any oral argument at the time?

A. It did subsequently.

Q. Before or after the decree of redemption?

A. After the decree of redemption was entered.

Q. Was that agreement referred to as made in November, 1896, made with you as counsel and receiver for McClintock?

A. It was.

(Counsel for the defendant objects on the ground that the agreement itself will show.)

A. I will state in this connection that all actions I have taken in the King matters have been as Receiver, representing the estate of McClintock. While in some of the cases the name of the Receiver does not appear of record. It does appear in the actions of ejectment when in some of the school land cases, but wherever his name does appear and I knew of it I have taken the case up and the name of McClintock has remained on the record in the same position where placed in the original suit. In some subsequent matters, respecting the estate, I have proceeded in my own name as receiver, but it is all effecting the same interest.

Q. Does the survey made by W. D. Sell in the action of Ejectment of Henry C. King against McClintock and Mullins and as redeemed in the Wyoming proceeding in September, 1897, embrace any part of the DeWitt Clinton survey claimed by you as receiver for McClintock?

A. I understand it embraces quite a large portion of it.

Q. What is the controversy between you as receiver of McClintock and Henry C. King as to the respective locations of their respective surveys as raised by the petition in the Wyoming case and as to the survey made by Sell under instructions of Henry C. King?

page 472.] A. As I understand the contention in all the cases, so far as the boundary lines are concerned, all are the same, and, in the original patent King claims the north line of his survey as the mouth of Gilbert's Creek on the Guyandotte

river. King's contention, as evidenced in the trial of the action of ejectment, as well as expressed in his petitions filed in the Commissioner of School Land cases is, that his line crosses the Guyandotte river very much further north than the mouth of Gilbert's Creek, approximately twenty-five miles further north, and, if he is able to sustain the location of his line as contended for by him, it will embrace a very large portion of territory of the DeWitt Clinton survey, whereas, if he is restricted to the mouth of Gilbert's Creek corner, as contended for by the plaintiff and the various defendants in the suit, there will not be a very great deal of conflict between the two surveys. One of the questions to be determined in all the cases is, the proper location of this line, and that is one of the principal matters at issue between Mr. King and myself as receiver of the estate of McClintock and is necessarily involved in the proceeding in the Wyoming County circuit court.

Counsel for the defendant here moves to strike out the testimony, upon the ground that the pleadings and proceedings in that cause are the best evidence of the controversy arising therein, and upon the ground that the same is irrelevant.

CROSS EXAMINATION

By Mr. M. F. Stiles.

Q. Did you ever attend any term of court at Oceana during the pendency of the cause of State against King and others with reference to that suit in any character or person?

page 473.] A. I did not in person. I was represented there by Mr. Sheppard, or at least I employed Mr. Sheppard to represent me—my interests in that suit.

Q. You spoke of a plea or petition in the nature of a plea in abatement to this suit. Have you any copy of the same?

A. I have not.

Q. Do you refer to any other document other than the petition described as petition in nature or an answer filed by Alexander McClintock, or do you refer to some other document in the case?

A. I refer to the pleading filed there by McClintock. It is a

part of this record in the Federal Court brought up from the State Court.

Q. Do you remember the meeting between Mr. Sheppard and yourself and me at the Florentine hotel in the city about November 20th, 1896, in which the matter of continuance and submission—of which you have spoken—was considered and agreed upon.

A. I remember that occasion, but I do not remember of being over at the hotel. I do not mean to say we were not, but I do not recollect it at this time. My recollection is, that the principal part of the negotiation took place in my office, although there might have been some discussion outside about it.

Q. Was not a draft of the stipulation prepared at that time?

A. I think that the complete agreement for the submission of the case in the Supreme Court was written out and my recollection is that the draft for the continuances of the Wyoming County matter had been prepared also and that Mr. Sheppard

page 474.] insisted on making some changes or interlineations, which were finally agreed to by Judge Stiles.

Q. Upon retiring from that conference, did you not state to Mr. Sheppard and myself that whatever he agreed to was to be satisfactory?

A. I do not remember making that statement at that time. I do remember, however, of telling you in the course of that negotiation that I would not agree to entering into any agreement concerning the matter at all unless it did meet Mr. Sheppard's entire approval.

And further this deponent sayeth not.

Z. T. VINSON.

Mr. Campbell proceeding with the examination of the witness:

Q. Since giving that deposition has there been any change in the case of King vs. Mullins and McClintock, pending on a writ of error in the Supreme Court of United States?

A. The *the* Supreme Court of the United States has decided the case affirming the judgment of Judge Goff of the Circuit Court.

CROSS EXAMINATION:

None.

Z. T. VINSON.

And further this deponent saith not.

pages 475-6.] This the 15th day of December 1902, the contesting defendants filed with the commissioner the following documents:

Copy of Patent of Commonwealth of Virginia dated the 1st. day of October, 1858, to Richard D. Coleman for a tract of 3645 acres.

Copy of survey of 800 acres lying in Buchannan County, Virginia made for A. J. May by Jacob Baldwin deputy survey.

Copy of a survey of 127 acres made for Uriah Eastep.

Copy of a survey of 33 acres made for William Eastep.

Copy of a survey of 3645 acres made for Richard D. Coleman.

Copy of Patent dated the 31st. day of October, 1848 to William Eastep for 33 acres.

page 477.] Met this the 15th. day of December 1902, pursuant to adjournment on Saturday.

Present: Counsel for the contesting defendants and Judge Stiles, counsel for the defendant H. C. King.

C. W. CAMPBELL, a witness introduced by the contesting defendants, after being first duly sworn upon oath, testified as follows:

EXAMINED

By Mr. Sheppard.

Q. State your age, residence and occupation?

A. Age 46 years past, residence Huntington, West Virginia, and am an attorney at law by profession.

Q. The defendant Henry C. King, in his amended answer, filed July 14th. 1902, in clause 35 as well as other paragraphs makes certain allegations, in relation to your connection *with* the suit

of the State of West Virginia, against Henry C. King and other, brought in the Circuit Court of Wyoming County in 1894, please read the references in that answer to you and state what you had to do with that case and *any* anything you may desire to state in relation thereto?

A. I dont remember just when my firm of Campbell & Holt, was employed by Captain *Willliam* McGee, to defend his interest in the ejectment case brought by Henry C. King against him and others and his interest in certain injunction suit brought by the same plaintiff, but I think it was in the early part of 1895. In the month of February 1895, my firm in connection with C. M. Turley, was employed to defend, King's ejectments by Alexander Trent, J. W. and G. R. Hinchman, J. S. P. Stafford, George R. McDonald, Hugh Avis, Anderson Grimmit, Bruce and Millard McDonald, W. W. Elkins, W. C. Browning, Wayne McDonald, W. A. Johnson, S. S. Altizer, Lee Joyce, W. E. Justice, W. T. Kennedy, John, F. M. and Albert Kennedy, A. A. Vance, and I think some of the sons of W. C. Browning. My firm was employed also but I do not know just when, by the

page 478.] Grayton Mining Company and the Grayton Water Works & Improvement Company, I do not recall at this moment any other clients in that case. Some time in the year 1895, at either the March or June Term, of Wyoming Circuit Court, I went to that Court, to look into this suit, which I had understood had been brought in that court. I went by way of Logan Court House from here and joined Mr. John A. Sheppard at that place and *proceded* to Wyoming Court. We took with us the original court file of papers in the case of the State against LeMoyne and other, which had been instituted in Logan Court, on the 15th, of June 1893,—it had for its purpose the sale of the same tract of land for the same forfeiture, as is mentioned in this case. When we got to Court we informed the Judge that there was a case in Logan County, of the State against LeMoyne which had been instituted prior to the institution of this suit, having for object the same as that of this suit and suggested that the Logan Circuit Court had thereby *acquirred* exclusive jurisdiction

of the cause, and we informed him that we had the original court file in proof of the suggestion. I do not think that Judge Stiles was present at that time, if he was I have forgotten it, but I think Mr. H. K. Shumate, responded on behalf of Henry C. King and said that the *logan* suit had been dismissed and subsequently reinstated on the docket but that this case had been instituted in the *interrem*. Judge McClaugherty, holding the court, said that he could not consider the original court files belonging to the Logan Court, and that we should have a transcript of that record and the matter ended there. There was no notice taken of the matter by a decree and I never appeared there in that case afterwards at any time or for any purpose. I was informed before I left the town that the order of publication had been quashed by the court and the cause remanded to rules I did not represent the State nor any person who was a defendant in that suit at that
page 479.] time. I dont think I had been employed by any person than those above named. The persons I had been employed to defend in the actions of ejectment and some of them in injunction suits, did not hold under or in privity with Henry C. King or any of his predecessors in title. I do not know how the fact is but some of them may have had some deeds from Jesse R. Irwin, if so their deeds will show the facts, and whether they had obtained such deeds before Irwin was made a defendant to this cause. I did not at that time, represent Stuart Wood, Egbert Mills, Egbert Mills Trustee, William H. Lawson, William H. Lawson, Trustee, Arthur D. Bright, Arthur D. Bright, Trustee, or William Kronett and I did not represent any of their predecessors in title, unless it was the Grayton Mining Company and the Grayton Water Works and Improvement Company. I did not own or claim any land myself inside of the Sell lines of the Morris grant and I do not believe that J. L. Caldwell or John Q. Dickinson owned any. I never did represent Z. Z. Dingess or his heirs, or M. B. Mullins, or L. D. Chambers, his wife or sons, nor did I represent as far as I now recall any *persons* or persons, under whom Caldwill, *Dickiinson* or myself in my own right, or as trustee claim any lands inside of the said Sell lines. The truth

is that my employment by the persons heretofore named, was to defend the actions of ejectment and by some of them to defend certain injunction cases and did not extend to anything in this case. It was my idea to advise my clients to appear in the case of the State against LeMoyne, in the Logan Circuit Court, and my purpose of going to Wyoming was to have that case dismissed because the court was without jurisdiction as I thought under the authority of Smith vs. Chapman, 10 Gratt., I believe, and then to appear in the Logan case.

page 480.] I never did afterwards appear in this case, for myself or any body else, while in that court, before the decree of the 30 of September 1897, nor did I authorize any body else to appear for me or my clients. The record of this cause shows that Henry C. King did not appear in this cause and seek or attempt to redeem any land until about June the 25th, 1896 and my action in suggesting to the court, the want of jurisdiction, in some time in 1895, in no way hindered, delayed or prevented any action on behalf of Mr. King. My motion or suggestion was not considered by the court because we had the original court file instead of a transcript. It is set forth by Mr. King in his pleading filed in July last that Mr. Sheppard and myself were in attendance upon said case in said court at sundry succeeding terms *in*deavoring to shape the course of proceedings so as to defeat or embarrass any action favorable to the *deendant* King or unfavorable to our interests and induce such action as would be favorable and advantageous to our clients. As I said before I was never again in attendance upon that court in this case until after this cause was remanded by the Supreme Court and I made no effort to shape the course of the proceedings, in any manner shape or form. It is also averred that myself and codefendants, set out in my answer and other who claim similar interests adversely to King, *procurred* a transcript of the record of the decree of the 30th. of September, 1897, and *procurred* Attorney General Rucker to lend his official aid and sanction to an appeal from said decree. At that time I owned no lands inside of the Sell lines, and I dont think Mr. Caldwell or Mr. Dickinson did either

and so far as I know by personal knowledge, or information those under whom we hold had no connection with the appeal mentioned in paragraph 38 of Mr. King's answer to the answer filed by myself, Caldwell and others. My information is that the attention of the Board of Public Works was called to this decree

page 181.] and it directed the appeal to be taken.

My firm was employed as I understood it, by Stuart Wood and the persons whose names are given in the answer of *Egberrt* Mills and others, or by those under whom some of them hold, to assist the State in prosecuting that appeal. I do not state it as a fact that we were employed by these people because I have no personal knowledge on the *sugject*—that is my understanding. If I mistake not, our fee was paid by Judge R. T. W. Duke, of Charlottsville, Virginia. We were not employed so far as I know of personal knowledge or by information, by any other persons, I know we did not represent myself or John Q. Dickinson or J. L. Caldwell or Z. C. Dingess or his heirs or M. B. Mullins or L. D Chambers of the Panhandle Coal and Iron Company or any other person under whom the lands in my answer mentioned are held. My law partner, Mr. Holt, represented my firm in that appeal. He may have assisted in the draft of the petition for the appeal and I know he prepared briefs and argued the case orally, both upon the hearing and rehearing of the cause. Mr. Holt did not represent myself, as owner or claimant of any lands nor did he represent Dickinson or Caldwell nor those under whom we or either of us hold. In paragraph 38 of Mr. King's reply to my answer there is a charge that we sought out the judges of the Supreme Court, after their final decision in this case had been rendered and attempted to have said decree so modified so as not to affirm the said decree of the 30th. of Spetember, 1907, in any respect. My recollection is that we had been informed by the clerk of that court on a postal card through the mail and possibly by publication in the news paper, that the opinion in the case had been handed down, reversing the decree, and we paid no more attention to it until after the term had adjourned and we then learned for

the first time of the character of the mandate; I never sought out a single one of the Judges, at any time or place, on or off the bench, in or out of Court and never authorized any person to represent me or my clients in interviewing the judges or either of them and I never heard that any such attempt had been made until I saw the allegation in Mr. King's pleadings.

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When the cause was remanded to the Wyoming Circuit Court neither myself nor my co complainants, so called, took charge of and supervised all the proceedings of this cause until the same was moved to Logan Count. I went to Wyoming County, prepared to look after the interests of my clients and when Judge Stiles presented an affidavit expressing a fear that the Judge of that court was prejudiced against his client and asking for a change of venue I think the only thing I said in reply was, that that was a matter entirely with the Judge and that I had nothing to say. I think after the court announced his intention to send the case to Logan County, that I drew, or assisted in drawing the order, which transferred the case to Logan County; if I did or said anything more than that I fail to recall it at this time. It was the purpose, so far as I was concerned, individually, and those interested with me in the lands on Rum Creek and Dingess Run, if the State did not file an amended bill and make us parties, to file a petition in the case and ask the court to have us made parties and this with a view *or* protecting our interest in the land claimed by us and prevent Mr. King from redeeming the same or any part of it. My opinion as an attorney, was that it is proper that the State should make us defendants, so that we might protect our interests, I said as much to the attorneys representing the State and if the fifth amended bill had not been filed I would have presented a petition as to the lands we claim on Rum Creek and Dingess Run; I do not know that I would have presented a petition for Stuart Wood or for Egbert Mills and others but in that respect would have been controlled by my associate counsel Mr. Sheppard

and Mr. Edward C. Lyon, whose final decision in such matters would have controlled us. When the fifth amended
page 483.] bill was presented to court and defendant King by counsel objected to its filing I did argue to the court the propriety of filing the bill and did announce that I did represent some of the new defendants. I did not declare that I represent all of the defendants that were proposed to be made parties. My recollection is that the fifth amended bill had been prepared by John B. Wilkinson, acting for John S. Marcum, attorney for the State. I did not prepare the bill or assist in its preparation, it was shown to me however before it was presented in court. I do not remember in whose hands the bill happened to be at the moment the attorneys for the State were asking the instruction of the court whether to file such amended bill or not.

It is also stated in Mr. King's answer that a mass of matter attacking Mr. King, was in the draft of the fifth amended bill, placed there by myself and others and that we had collected the material, data, for the preparation of the bill, this is not correct; the answer of Mr. King filed in Wyoming in June 1896, gave the names of most of the new defendants and I dont remember being called upon for any information at all. Mr. Wilkinson, was in a general way familiar with the lands that Mr. Dickinson, Caldwell and myself had *purchaes* up there and needed not to call on me for any information in that respect. If I did not I would have given any information in my possession had I been called on. If there was anything in the fifth amended bill which was an attack upon Mr. King, I *havent* the slightest recollection of it nor do I remember any matter in the bill as to his title nor do I remember any matter in the bill being eliminated. There was a request by Judge Stiles that the order directing the fifth amended bill to be filed, should show that myself and some other attorneys had argued to the court that the bill should be filed and Judge Stiles prepared a draft of an order showing that but that was stricken out. Mr. George F. Miller was *atending*
page 484.] that term of court, he and Judge Harvey, S. S. Altizer and Mrs. Vici Neighbert, had recently purchased what is known as the Neighbert lands in Logan County

and I understand that Judge Harvey was acting as their counsel and that evening after the amended bill had been filed Mr. Miller told me that the Sheriff would want his fees paid or assured for serving the process on the new defendant named in the fifth amended bill, otherwise he *wouldent* undertake the labor of serving them and waiting the determination of the case to get his fees, and Mr. Miller informed me that he told the sheriff that his fees would be guaranteed. I saw the *Sheriff* on the same evening and made this kind of an arrangement with him—that he if given the process, to serve on all the defendants in Logan, Mingo, Wyoming and McDowell he would do it for fifty cents instead of seventy-five cents the legal fee and we would advance the money if he would assign the fee bills to us at the regular rate; afterwards he made out his account and sent it to me and I got a check of about sixty-four dollars and some cents from Stuart Wood and one of about a *Similar Amount* from Edward C. Lyon and accounted to the *Sheriff* for those, and on behalf of myself Caldwell and Dickinson paid twenty-nine dollars and forty two cents and I think I got Judge Harvey and Mr. Miller to advance a similar amount and I think the sheriff is still claiming something less than five dollars that has not been paid. I think I have an assignment of the fees, if not it was the intention that it should be made. We never paid or agreed to pay any of the fees for publishing the order of publication. I dont remember of contributing or of any of my clients contributing any other costs since the cause was remanded from the Supreme Court. There might have been some costs paid to T. C. Whited, the Clerk of the Logan Court, when the cause was transferred to Cabell County. The cause was transferred, as I understood, at the instance of Mr. King, but the order
page 485.] does not show it, is my recollection of it. I was willing to advance the cost of the *Sheriff* and to have my clients assist in paying these costs, in order to hasten the case. After the fifth amended bill was filed Mr. King obtained a rule for a prohibition, from the Supreme Court of our State to the Circuit Court of Logan County, and the Judge thereof—E. S. Doolittle, to prevent that court and judge from *intertaing* any

controversy whatever, but only ascertain the amount of taxes, due from King upon such land inside of such land as he might describe and desire to redeem. Acting for myself and co-owners I asked permission to oppose the granting of the writ on the return of the rule and I think Mr. Brown, of Charleston, was employed to resist the prohibition and I contributed to his fee and I think Stuart Wood contributed to his fee and I think Mr. Lyon also. Mr. W. P. Hubbard was employed by Mr. Lyon. Mr. Sheppard, I think took part in the case and he can speak for whom he represented. I did not want to be dismissed out of the case. I wanted to raise the questions you now find in my answer and I wanted to resist the right of Mr. King to redeem my land or any part of it or the right of the State to sell any part of it. After the case was transferred to Cabell County and after certain answers had been filed, including my own, I think a second application was made for a prohibition, by Mr. King and I resisted it again. The court denied the writ in both cases.

I might say that this litigation, in one form or another, had been going on since the latter part of 1894 or the early part of 1895. There were ejectment cases in the Federal Court and this case in Wyoming and State against LeMoyne in Logan and certain injunction suits against cutting and removing timber from the land in controversy. And there were other suits

page 486.] by the State of West Virginia, against the 100,000 acre William McCleery survey and the John Green 84,000 and the George K. Taylor 213,000 acres and the Dewit Climton 142,000 acres. The Sell lines of the Morris survey embrace a portion of several of these large surveys and I was getting anxious to get down to close fighting with Mr. King and have these questions determined and the titles to land cleared up. I might also say that neither myself, Mr. Caldwell or John Q. Dick*ingson,* or any of my clients, so far is I know, had any opportunity, or sought any opportunity in the Wyoming Circuit Court to oppose any matter of fact or law to any decree in this case and especially the decree of the 30th. of September 1897, further than the suggestion of the want of jurisdiction, as heretofore stated. The case

of King against Altizer and others in ejectment was tried at Parkersburg, in the Federal Court, in the late fall or winter of 1895, resulting in a hung jury. I believe it was tried as to Mullins and McClintock and son. It was again tried in the same court in January or February 1896, resulting in a judgment for said defendants. I had confidently expected that both of these trial would result in establishing the boundary line and I thought it would be located according to the contention of the defendants—that is that the western boundary line would cross Tug River at the mouth of Turkey Creek and Corner on Guyandotte River at the mouth of Gilbert Creek and if so the lands of nearly all of my clients would have been excluded from the survey; but the last trial went off on the question of King's title outstanding in the State by reason of forfeiture, this judgment was carried to the Supreme Court of the United States, with a view of testing the constitutionality of the West Virginia constitution and statutes *forfeiting* lands for non entry. I believe this writ of error was submitted on printed briefs alone within the first 90 days of the October Term 1896 and was not decided until after the de-

page 487.] cree of September 30 1897. I was informed of the existence of the stipulation between Mr. King and Alexander McClintock entered into in the fall of 1896 whereby it was agreed that this case should be continued by the court and commissioner till the Supreme Court should act on that writ of error on certain contingencies. I never knew of any proposed action in this case by the State or any party to it until after I was informed of the decree of the 30th. of September, 1897.

Question. When did you take up the management of this case for the purpose of presenting the evidence on the question of location and who has been acting with you in presenting such evidence?

Answer. Some time in August—July or August 1901 And Mr. John A. Sheppard was acting with me, and I had frequent consultations with Mr. Lyon and Mr. Hubbard of Wheeling.

Q. You may now state at length what you did in the preparation and presentation of the evidence on the question of location?

Answer. We had heard, as I understood, through Mr. Pleas-

ants and remotely from Mr. Moses Charles, of a corner on Knox Creek and Mr. Lyon desired that we should investigate and see what there was to it. I understood that Mr. Claud Gaujot had *preceeded* us over there and that Mr. Sheppard had been there. The sugar snag was found and it had been brought down to Mose Charles smoke house. Along in August 1901, Mr. Sheppard, Mr. Gaujot and myself went to Knox Creek for the purpose of looking into this matter and to examine the country. We got to the mouth of Paw Paw one evening and stayed all night there. One day, I dont remember whether it was the day after we got there or not, we went to where it is said the four white oaks' corner stood; another day, we three along with Harve Charles, went up the Race Fork, in the mean while Mr. Sheppard and Mr. *Gaulot* had informed what they knew or had heard about the supposed corner spoken of by Mr. Pleasants. We had no difficulty in agreeing that there was nothing to that. The location of the corner—that is the supposed corner was pointed out to me as we rode up the creek and we stopped for a few minutes at Mose Charles house on Race Fork and I was shown the sugar tree snag in the smoke house. We advised that the sugar tree snag be taken back and placed where it was found, we thought that if it was the corner of any persons land we did not care to destroy it or to alter it in any way. We then proceeded up the creek for the purpose of seeing to what extent the country had been cleared and the timber removed and whether there would be any use in setting on foot a thorough search in the woods for the south-west corner of the Morris grant—that is for the three poplars and sugar tree by a small branch of Knox Creek and to ascertain about where the Sell line had crossed that fork, with a view of searching up above and below and back and forth on the line. We came to that sulphur spring shown on the Reddy Map on the Right Fork and we dismounted and ate *or* dinner there, we had some canned goods of one kind *an* another. It was our *expection* to spend some time on Knox Fork and waters in search of this corner if it appeared that the country had not been cleared out to great an extent. I dont think it was our intention when

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we ate our dinner to go any further that day up the creek but before we mounted I think I asked Mr. Charles if there was any person living up above on that creek and he replied that Dan Justus lived on the creek above there about a half a mile and I suggested that we go and see him. We rode up to his gate and he came out and we asked him if he knew where Sell crossed the creek and I think he said about where he crossed, not exactly but in the neighborhood in where he crossed, it *dident* appear that he had been along at the time and we asked him how much search Sell had made while in there for corners and he seemed not disposed to give an answer to the question at least he hesitated and he was asked how long Sell stayed on that fork and dident seem to to know that either and some other question was page 489.] asked on same lines, but I do not remember just what it was, and Justus replied that a man might ask too damn many questions, or something having that substance. Then Harve Charles spoke up and introduced us, he then seemed to remember something about Mr. Sheppard, having heard of him in connection with a King trial at Abingdon. Mr. Charles explained to him that Mr. Sheppard and myself were attorneys for the people over in West Virginia and opposed to King. He seemed to get in better humor then, then I think Mr. Sheppard asked him if he knew of any old corners on that creek—corner trees and I am not certain but I think he said that he defied any man to show any standing corner there. A shower was approaching and he asked us to go down and go in on the porch. We did so and he set out the chairs on the little front porch and according to my recollection we had not more than set down when he remarked, that if it is corners *youens* want I can take you to them in five minutes. I then asked him, what kind of corners and he replied, two poplars and a sugar tree and I told him I wanted to see that corner and I think he pointed out the hollow above his house and said it had been cut down. Up to that time no person had said anything to him or in his hearing *or in his hearing* about the kind of corner we were looking for or the description of its locality and I was impressed with his stating the

kind of trees he did. I told him I wanted to go immediately to that place. Mr. Gaujot, Harve Charles, Dan Justus and myself went up to the stumps that you have heard so much about and he pointed out the two poplar stumps and the location of the sugar tree. We went immediately after the shower had ceased or slackened and Mr. Sheppard *dident* go on account of the wet weeds. We then went back to the porch where Mr. Sheppard was sitting and his—Dan Justus, wife, Julina, was sitting there also

page 490.] I *askeb* Mr. Justus, if he knew of any person else who had seen those trees marked and he studied a moment and his wife spoke up and said "Daniel all those boys were here on that day at the working" and he said to her "I expect you had better keep *you* mouth shut". He then replied to my question by saying that Riley Lester, William Anderson Lester, John Harrison Lester and his brother Wayne Justus were there on the first day and I doat know whether he said at that time that Miles Lester was there or not but he did say, if not then, later in the day, and before we left there that Miles Lester was there on the second day and helped cut down the poplar. I thing Mrs. Julina Justus, reminded him of the fact that Miles Lester, commonly called Jake was there on the second day. We had more or less talk there on the porch and I think Mr. Sheppard took out a map of the Morris grant showing the Sell location and our own contention and either read from the patent or gave a desciption from memory of the south and west boundary lines of the survey if not more We then went up with Mr. Sheppard to the stumps and looked around and I went over after while and got on the top of the logs in the branch, there are three of them I think, and I was looking around the logs and he remarked possible in response to some question Mr. Sheppard asked him, "you need not be looking at them logs that he had burnt hell out of the but cuts". I think that was his remark. I think I made *enquirys* whether he had used the but cuts in rails or barn logs, that we might trace them, but he said he had burnt them. I noticed a depression in the ground below and not far from the lower poplar stump and I asked Mr. Justus if he knew what kind of a tree had fallen up there and he said that when he

first knew the place some ten or more years before there was a large poplar lying there, very much decayed and looked like it had been down twenty-five or thirty years, I think he said. I asked him if he noticed any marks on it. He said he had not as he never had looked for any. He also explained that the
page 491.] sugar tree was but a snag ten or twelve feet high and was dead and he set fire to it and burnt it out. There was a depression in the ground where he said the sugar tree stood, close by the remains of an old lynn stump. We made but *but* very slight investigation at the lynn stump, *it was very apparent that the stump there was lynn and in scratching around that we found, what some of them thought, was sugar tree bark, but whether it was or not I am not prepared to say. Dan also stated that the lynn tree was marked in the same way that the poplars and sugar was.* He also said that there was a beech tree down below that was marked as a line tree. I dont know whether he said it was a side line or a line tree. On our visit up to the stumps when Mr. Sheppard went along, Justus was asked to indicate on one of the stumps I believe, the sides where the marks were on and Claud Gaujot had a compass with him and set it down on the stumps and the marks made by Dan pointed east and north. We went back there by an appointment with him when he was to have the three Lester young men and Miles Lester there, for us to interview. We met them there and interviewed them and *takk* short statements from each. We took down statements from Daniel and from Julina and the other witnesses he produced. He brought his brother Morgan over and we got a statement from him, either there or at Grundy I dont know which, we met him at both places I believe. I think he brought Simeon Justus to us and he made a statement Mr. John Sheppard and I went to Levi Lesters house to see John Harrison Lester, he was confined to his bed with a large running sore on his side. We had a Kodak along and took some views at Dan's house and the alleged white oaks' corner and *als* the mouth of Race Fork. Before we took our dinner at the sulphur spring on the day mentioned I never knew there was such a man as Daniel Justus. We were not out to hunt him and we only learned of him

by asking if any person lived on the creek up there. Up to the time of the remark by Daniel Justus on the porch, that if it is

corners *youens* wan. I can take you to them in five

page 492.] minutes there was no secret or private communication between Dan Justus and Harve Charles and there was no secret communication between them, from the time we arrived there together, till after Dan Justus had told us about the kind of trees that were there marked and had pointed out from the house *there* location. Harve Charles was with us for the purpose of showing the country and he was not in our employ for any other purpose. I think he furnished Mr. Sheppard with a mule that morning and I think I had gotten a horse from Jonathan, his brother about a mile or so above. Claud Gaujot and myself spent the first night with Johnathan and Mr. Sheppard stayed down with Harve Charles. We went up above because Harve had no room for us. I dont know for an absolute certainty that Harve Charles *dident* have some communication with Justus before we went up to the stumps but I am absolutely positive and certain that there was no communication between them, except in the hearing of us all till Dan Justus had told us about the kind of timber, how marked and where located and I do not recall the fact that there was any interview between them after that and before going to the stumps. I was present when Mr. Sheppard interviewed the different witnesses and took down in the memorandum book their statements and when he read them over to the different witnesses and they verified them. When we came back from that section of the country we advised that a line should be run from the alleged four white oak corner to these stumps and from there to the mouth of Gilbert Creek, the supposed location of the three sugar trees and also to meander Knox *Cree*, the Race Fork, and from the mouth of Race Fork to the alleged four white oaks and we advised that a careful search be made along those lines for line trees. Mr. Sid Stone and Captain T. J. Matthews of Kanawha, were employed

and sent over there with the instructions I have

page 493.] named. We also instructed the surveyor to run out the local surveys. I should have said awhile ago

that Mr. Sheppard and I after getting this information from Daniel Justus, went to Grundy to look u all the surveys we could in that neighborhood to see whether these two poplars and sugar constituted a corner to any other survey or tract of land and we filed this morning with the commissioner copies of the surveys and grants in that locality. When got information that Daniel Justus had come down in this direction last April in company with Watkins Blankenship and had gotten with C. L. Dixon at Kenova we went to Knox Creek and we went up from Devon on the Norfolk and Western on the log car with Daniel Justus and a number of other people. Daniel was drinking and when he got to the saloon of Harve Charles, just below the mouth of Paw Paw, he got off of the log train and went into the saloon and we were informed that he went into the back room and jumped into the bed and stayed there until after night. Mr. Sheppard and I went up to Harve Charles and stayed all night. Harve Charles came in from working the road, it was said and some of them when they came to the house said that Harve Charles was down to the saloon talking to Dan Justus and Charles said to Mr. Sheppard and myself that Dan Justus said that he *wasent* going to make any affidavit and *gouens needent* to ask him to.

Defendant King moves to strike out the alleged statement o Harve Charles to the witness.

WITNESS PROCEEDING. Some time during that night, after we had gone to bed and before we got up next morning, Harve Charles, himself *dident* turn up next morning and we were informed that he had gone to Devon, but on our return home we were informed that he had gotten with Watkins Blankenship and had gone to Charleston and was seen with perhaps, Judge Stiles and Colonel Wilder and *possible* Mr. Dixon or some of them. This was in April sometime, 1901 Afterwards we were informed that Harve Charles had gone direct to the law office of Judge Stiles at Charleston and was there asked to make a certain affidavit on condition of having his lands and timber standing on the lands of others, released from the King claim and litigation. Harve Charles himself, informs us

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that all of his property had been released and that in order to get it he had signed a statement but he said he had not sworn to it. He said that it contained some things that was not so and he said he called Watkins Blankenship's attention to the fact at the time I never saw the statement that he is supposed to have made and signed in order to get his property released nor the supposed release which they gave to him.

Defendant King moves to strike out all the alleged *statemen* of Harve Charles to the witness and all the testimony of the witness relating to alleged information concerning the movements of Harve Charles and the testimony concerning such movement

WITNESS RESUMING. I do not know the value of the land and *timbe* which is said to have been released by the defendant King upon Charles signing the statement, but I have understood that it was estimated at $50,000.00

Defendant King moves to strike out the last statement of the witness.

WITNESS *RUSUMING.* I see a great deal of valuable timber in the mouth of Paw Paw in Knox below most of which is claimed by Harve Charles to be cut from lands on Paw Paw fork. I saw Morgan Justus and Daniel Justus, on last Saturday, I believe a week ago and Morgan Justus admitted and I think Daniel did also that the witnesses that Dan Justus brought to Williamson to *ttestify* in behalf of King, including Morgan and others, refused to testify unless King through his agents would release certain lands and I believe they said they started for the depot to catch the train when they were called back and certain releases were executed and perhaps others promised. An old lady who was introduced to me as Elizabeth Justus and as the mother of Dan, Morgan,

page 495.] Sennett, Andy, Wayne and Lafayette Justus, and she showed me a paper purporting to have been signed by Henry C. King by Colonel Wilder, I think, releasing a small tract to her and to her son Jim Justus. I have in my office what purports to be a copy of that release. Morgan Justus said that his land was released in a paper executed by King to one Simeon Justus but this paper I never saw. I have had one or two letters

from Colonel Wilder and I believe it was his hand writing to the paper in the possession of Mrs. Justus.

Defendant King moves to strike out all the testimony of the witness following the last motion to strike out.

WITNESS RESUMING. I was at Dan Justus house and on the Race Fork when surveyor Reddy went over there to execute an order in this case. I carried the front end of the chain from Dan Justus gate up to the old Estep place in meandering the creek and also from the poplar corner in the mouth of the Hurricane Fork, the white walnut and beech and thence to the white oak, two birches and hickory and I think I carried the front end of the chain from that corner up to the stumps in question and helped to measure the distance between the stumps. I was right at and had my feet in the depression where it is said the sugar tree stood while Mr. Reddy was at his *compas* on the lower poplar stump. I stood there in that immediate neighborhood, and at no time in my judgment was I beyond five or six feet from that stump till Mr. Reddy came to the place.

Mr Sheppard, Levi Lester and Sam McInturff were at the same location at the same time with Mr. Reddy. I had been there myself and was not then over five or six feet away. Mr. Reddy stooped down and picked up something from the ground about the depression where it is said the sugar tree stood and said this is sugar tree root, he picked up another piece and pronounced it sugar tree root he picked up a third piece and called it lynn and I think those were the only pieces that he picked up or made any remark about His statement that there was a peck or more of chunks of sugar tree roots at that place is absolutely false and untrue. I was right at the place, tramped around and in the place and was there and saw him examine the place and the idea that there was that quantity of sugar tree roots *there* is false. There were as you find nearly find in nearly every new land different kinds of roots and barks that will be observed on the surface of plowed land and there were at this place close to that lynn stump such matters to be seen scattered around but no more there than elsewhere. There were some poplar roots

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lying in or close to the depression close to the lower poplar stump and where Dan Justus said a large poplar had uprooted, but where they came from, whether there or elsewhere *I know not.* It was within the range of the roots of the poplar stump above and my own opinion is that judging from the depression that the tree if any ever stood there had been too long gone to leave any roots at this late day. Mr. Reddy seemed to be extremely *anxiius* to find some line that would run to or through the location of these stumps. He took the distance and bearing from the white oak, two birches and hickory up to them and then when he ran the line from the same corner up to the triple lynn he measured the distance over to the right to the stumps and he went back again and took a different bearing, according to a copy of the 800 acre survey and measured that line up to a point up to opposite the stumps and measured over to the stumps again. Then he went down to the sulphur spring and went up the drain at that point to a gum marked and which is shown as the gum and dog-wood corner of the Coleman survey, he then ran on that line towards the triple lynn, taking surface measurement until he got on the hill side above these stumps and there stopped without going to the stumps of the alleged triple lynn and turned and measured the distance down to the stumps again. Mr. Reddy also states the

page 497.] knoll at the mouth of the Dan Justus hollow, was not a suitable place for a camp. I believe he said because it was too high and too far from water. To my *mond* it is an ideal place for a camp. It is *elevate* from fifteen or possibly twenty *fet* above the level of Race Fork and ten or twelve feet above the level of the spring. The ascent from the spring to the top of the knoll is very easy and convenient and it is not *beyong* fifty or seventy feet from the spring to the center of the knoll. The knoll is rolling and would shed water in nearly every direction and in my opinion would be a very dry and nice place for camping. The spring seemed to *b* be bold and furnished an abundance of water and I have no doubt before the land was cleared the water was cool in the *sanging* season. Right at the foot of the knoll in the Race Fork was when we were there in July, and every time I have been

there since, even when Mr. Reddy was there, an abundance of water. This *ho* hollow is a short one but what you would call a wide open mouth hollow.

QUESTION. Had I been at the house of Daniel Justus the day *befor* we all went there as you have detailed?

A. Never to my knowledge, at any time.

Q. Was I with you continuously on that trip?

A. You were.

Q. When did Daniel Justus tell us the trees had been cut?

A. The lower poplar and beech was cut at a working, I think he said on Christmas day and I dont remember whether he stated the year or not, I think it was four or five years previous to *tha* and that the upper poplar was cut, the following day by himself and miles Lester.

Q. Did I take the plat and descriptions of the Morris tract from my saddle bags and read them until after you come back from the stumps the first time?

A. No sir you did not.

page 498.] Q. Where did Dan Justus say the log in the drain came from?

A. I think he said it had been slipped out from the hill from above there, the little end I think had been trimmed as logs are usually trimmed for slipping.

Q. How did Dan Justus tell us the two poplars and sugar tree were marked?

A. I think on the north and east, a statement was taken down at the time and read over to him, whatever that was.

Q. Did he say whether they were marked as corner trees?

A. He did.

Q. Had you ever been in that section of country before that time?

A. I never had been.

Q. Were you acquainted with any of the citizens on that creek?

A. I dont think with a single one of them.

Q. Was the surveying shown to have been done by surveyor Stone and Matthews done under our direction?

A. I so understood it and gave some written memoranda for the surveyors to go by. They went in and did the work and I dont think we were ever present while that work was going on.

Q. Were you advised from time to time of the developments during the progress of that work?

A. Not by any official report but I heard from time to time in a general way the work that was going on and what was being found.

Q. When did you first hear that Dan Justus had changed his statement about the corner trees?

A. If I remember correctly Commissioner had given notice to proceed in this case on the 22nd. day of April last and I think you came down the Sunday before that day and you gave us an account of what you observed at Kenova and your suspicions We then went to Knox Creek possibly on the evening of the 22nd or morning of the 23rd. and there learned that for a price he had agreed to make an affidavit stating that the two poplars and sugar tree were not marked as corners and that his statement to us in August 1901 was false.

[page 499.]

Q. Is that trip the time you speak of us going up on the log train with Daniel Justus as he was returning from Charleston

A. That is the same trip.

Q. Were you at the mouth of the Hurricane Fork when Mr. Reddy was there surveying?

A. I was.

Q. Was there found at that place any trees marked by surveyors as corner or line trees except the poplar corner tree and two poplar line trees of the Estep survey?

A. There was not any *othor* there was a beech standing not far away that Mr. Reddy seemed to want to say was a side line and Mr. Sheppard called his attention to the fact that it was not marked as a line tree or side line tree either and he came up and looked at it and reluctantly agreed that it was not marked. What he was *he was d*epending on as the upper hack mark had no resemblance to me of ever having been marked by any sort of a *took*. I *dident* measure it but it was a flare in the bark perhaps six inches around

the tree or more and if I remember right at or toward one end of it it was some inch and a half or two inches wide.

Reading the affidavit of Reece Davis it is *absolut* false and untrue as he states that Dan Justus spoke only of marks in the bark. It is also untrue that he said nothing about marks in the wood and is not true that after talking to Mr. Sheppard and myself that Justus claimed to have seen marks as of a hatchet *sone* six or eight inches deep in the wood. Dan Justus never in my presence or hearing said anything about the marks of those trees being in the bark only. Davis affidavit is also untrue when he undertakes to detail what Coon Lester Riley Lester should have said about the marks on the trees. Reece Davis was not at Dan Justus when Daniel pointed out the stumps and gave us a description of them and how they were marked, he was however a few days later and himself stated that he had seen one of those poplars marked as a corner on an *occassion* when he had been in there about some walnut timber, I think. He never said anything about any cucumber at that time that I now remember of.

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CROSS EXAMINATION

By Judge Stiles.

Q. Who were with you or who were present on the same *nission* at the time you went to Wyoming Court and objected to the *juris-dition* of that court over this case?

A. No one that I know of except Mr. Sheppard—Mr. Turley a lawyer from Logan may have gone to attend the court.

Q. Do you remember whether Judge Duke or Judge Elicott?

A. Neither of them was there.

Q. Do you not recall that I was there and argued in support of the jurisdiction of the court and in opposition of your objection?

A. I do not remember that you were there at all. I had it on my mind that Mr. Shumate was the man who responded.

Q. Do you not recall that Judge McClaugherty intimated a doubt of his jurisdiction over any portion of the land, except such as lies in Wyoming County and that you and I agreed in the posi-

tion that if the court had jurisdiction at all it had jurisdiction of the entire tract?

A. I do not remember Judge Stiles in that connection at all but since you mention it I believe there was something said by Judge McClaugherty about jurisdiction of the land in Wyoming.

Q. Was it upon that *accassion* that objection was made by you or some one to the affidavit or order of publication and the cause was remanded to rules notwithstanding the statement of Mr. King's counsel that he was willing to make answer notwithstanding the alleged defect in the notice as he claimed under

page 501.] the persons as to whom the notice was said to be defective, or under their ancestors by grant during the lifetime of the ancestor, and objected to any delay in the proceedings?

A. I do not remember any argument or motion made to quash the order of publication. I cant recall Judge Stiles in that connection. It is on my mind that I was informed by Mr. Sheppard at the hotel that the cause had been remanded to rules and that the order of publication, I think, was quashed, but I made no such motion and took no part in any such motion as I recall.

Q. Your business at court at that time related exclusively to this case did it not?

A. It did. And to the one point. I think I took the Gratt. case with me and thought I had cinch.

Q. Your object then, as in all subsequent stages of the case in which you took any action, was to prevent a redemption by Mr. King was it not?

A. I never took any subsequent action in the case until I filed my answer and those of some clients, and it was my purpose to prevent, if possible, a redemption by Mr. King of any lands of my own or the lands of any persons that I represented. My firm took part in the appeal from your redemption decree of the 30th. of September 1897 and sought to reverse that decree

Q. I think you said your purpose, if the suit was dismissed, was to advise your clients to appear in the State vs LeMoyne; did any of them on your advice appear in that case?

A. I think not, none that I know of. I dont know that I ever reached the point of advising them.

Q. Did you see the answer of Mr. King or any copy of it at or about the time it was filed, or become informed that it mentioned the names of numerous clients of yours and some of the persons under whom you now claim and suggested that they be made parties to the suit?

A. I am quite sure I never saw that answer or a copy of it until I saw it in the printed record on the appeal,
page 502.] and I have no recollection of ever being informed of its contents. I did not attend that court any more until after the appeal.

Q. Was not the petition for the appeal drawn or prepared in your office? and the appeal applied for by your law partner

A. If it was prepared in my office I have no knowledge of it. I think it was prepared at Charleston in the Attorney General's office. I think Mr. Holt so informed me, by General Rucker with Mr. Holts assistance. I dont know who presented the petition and transcript to the Judge for the appeal.

Q. Did you see the transcript of the record or have it in your office before it was presented with the petition for an appeal?

A. I have no recollection of it now. Such a thing is possible.

Q. Do you know by whom the question of appealing was suggested to the Attorney General?

A. Only by information.

Q. You may state what that information is?

A. My information was and I do not remember how it got it that John A. Sheppard went before the Board of Public Works at Charleston and called the attention of the Board to this decree and that the Board had directed the Attorney General to appeal the case.

Q. At the time this appeal was applied for and the case argued upon appeal did you not claim lands on Dingess Run or Rum Creek?

A. My purchase on Dingess Run commenced on June the 19th. 1899 and Rum Creek the 22nd. of June 1899. Mr. Dickin-

son had bought some lands *of* Dingess Run in the April previous to that.

Q. Do you know whether Brown, Jackson and Knight represented Mr. Dickinson upon the appeal?

A. I do not, never heard of it.

Q. Were they not than and had they not for a long time been his general counsel?

page 503.] A. I do not know. I think Mr. Brown of that firm is General Counsel for Mr. Dickinson, I have heard him speak of him often as advising with him. I think that Brown, Jackson and Knight represented the Panther Lumber Company in that appeal. But of this I am not certain.

Q. Did you take any part in the preparation of the brief upon appeal to which your firm name is signed?

A. I dont think I did, but stood ready, willing and anxious to render Mr. Holt any assistance in my power in that behalf.

Q. When the mandate was presented at the Wyoming Court after the final disposition of the appeal who were present with you in connection with the case?

A. If I mistake not Mr. Sheppard and Mr. Lyon and possible Judge Harvey, but I dont recall him.

Q. Was there any action taken in the case at that time other than entering the mandate and removing the cause to Logan County?

A. None that I know of now.

Q. Did you not draw both the decrees for those purposes?

A. I have some recollection of drawing one and may have drawn both.

Q. And you were ready to petition into the case at that time if it became necessary or if the State did not file an amended bill bringing you in?

A. I went there prepared to present petitions in case the suit remained in that Court and Mr. King filed his amended answer describing the lands he wanted to redeem. The mandate required such amended answer and we could not know what lands he would ask to redeem until that was filed.

Q. If you were not a party to the suit in what way would your interest be effected by Mr. King paying taxes on any land he pleased ?

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A. The mere payment of taxes on land is one thing, the redemption of land for forfeiture for non payment of taxes, is another thing. So long as Mr. King is prevented from redeeming my lands, just so *lond* he is prevented and disabled from maintaining any action of ejectment against me. I thought then and think now that Mr. King's claim that his land embraces mine is unjust and is not warranted in law or fact.

Q. You objected to his redeeming independently of the question of location did you not?

A. I dont know that I comprehend that question. I would never have had any objections to the decree of the 30th. of September 1897, if Mr. King had redeemed only the land on which the taxes were calculated but by the way the decree was drawn he paid a sum calculated upon about ten thousand and declared all the land in West Virginia inside of the Sell lines, embracing as I am informed as redeemed by such payment. The Commissioner seems to have found after a fashion that there were about ten thousand acres in West Virginia, inside of the Sell lines, consisting of mountain tops and strips of land here, there and yonder, cut off from water courses and high ways, as all the vacant land there was inside of the Sell lines and he proceeded to estimate the taxes on that quantity amounting to about $2198.00 and Mr. King upon paying that sum with some costs declared the whole survey lying in West Virginia as redeemed, without paying a cent of money on my land or the land of any one else. I thought then and think now that that decree was unjust to the State and was little short of an out rage, especially in view of the quantity of the land that Mr. King now embraces in his amended petitions and seeks to redeem. As a land claimant and as an attorney representing certain land claimants I do not object to Mr. King redeeming any redeemable land inside of the proper location as we view it, of his grant. I do object as a citizen of the State to Mr. King re-

page 505.] deeming any vacant land west of Gilbert Creek. And I think the State would be justified in objecting to Mr. King redeeming anything west of that line.

Q. Your objection to Mr. Kings redeeming was not less strenuous than before after he had offered and petitioned to pay the taxes not upon ten thousand acres but upon all the land described in his amended petition including Rum Creek and Diagess Run?

A. I was always opposed to Mr. King being allowed to redeem the lands of any client of mine, whether inside or out side of the Gilbert Creek line and whether he offered to pay ten thousand or upon all of the land described in his several amended petitions. I would resist if I could the beclouding of their title in that way and getting into a position to maintain an ejection against them. If he could be prevented from redeeming the redeemable lands if any, west of the Gilbert Creek line, the State will be entitled to collect taxes from the date of her formation in 1863 and not merely from 1883, from which date Mr. King would pay. I want to be understood as being opposed to Mr. King redeeming any lands of my own or those who are interested with me as owners or of my clients when they can bring themselves within the provisions of the West Virginia statute. I practiced regularly in Logan County, and most of my home clients lived there and in Mingo and I did not practice regularly in Wyoming and in fact at all. I preferred to have the Wyoming case dismissed and afterwards if my clients accepted my advice to go into the Logan case and fight the matter out.

Q. The lands that you call redeemable lying west of Gilbert Creek and within the so called Sell line are principally within the John Green 84,000 acre tract, are they not?

A. That is my information.

Q. No taxes were ever paid upon that tract under that grant from the issuing of the grant to the present moment, were they?

A. None so far as I know or ever heard, though page 506.] I never investigated the question.

Q. That 84000 acre grant embraces within its

boundaries as laid down upon the principal map in this case more than 100,000 acres does it not?

A. In deed I dont know.

Q. Do not you claim some title or interest in that tract so far as it is susceptible of claim of title?

A. I do not. I had a deed I think to me as trustee purporting to convey to me nine twentieth of that tract, I don't know whether I have conveyed that tract or not, but I had no interest whatever in the purchase and put not a dollar in it. I bought it in the interest of Mr. Edward C. Lyon, or rather at his request, and in part George F. Miller/Thomas Harvey, S. S. Altizer and Vici Neighbert They were in to the extent of having a boundary deed for certain patented tracts of land, I think it is on Island Creek. I think I paid $600.00 for the nine twentieths of that 84000 acres and they paid $200.00 of that and were to have a deed describing an outside boundary.

Q. I understand then that as to the residue of the nine twentieths you have either conveyed to Mr. Lyon or hold in trust for him?

A. Mr. Lyon got me to make the purchase but I do not understand he is personally interested in it and I dont think he ever told me who was and I dont believe I have made the deed yet. Mr. Lyon, however, says I have, I had forgotten it.

Q. You do not remember to whom the deed was made?

A. No sir I do not.

Q. Do you know to whom you delivered it?

A. If I made the deed I delivered it or mailed it to Mr. Lyon

page 507.] Not being able to conclude the cross examination these proceedings were adjourned until Tuesday Morning. December 16" 1902

J. T. GRAHAM,
Commissioner.

Met pursuant to adjournment on yesterday, this the 16th. of December 1902.

Judge Stiles resumed the Cross Examination of Mr. Campbell as follows:—

Q. When was the purchase of this property made?

A. Some time during the summer months I think, or might have been last Spring.

Q. If you executed a deed to Mr. Lyon about when was that probably done?

A. I dont think it could have been more than two months ago.

Q. Who is the claimant if you know, of the other eleven twentieths of that tract?

A. I do not know. I have seen the deed on record in Logan County or a trust deed by J. C. Miller on the nine twentieths for $4000.00 but I dont remember now who the owner of the eleven twentieths was.

Q. Is it not your understanding that the Kountze Brothers or Mr. Luther Kountze or some of them is the actual claimant of the eleven twentieths and also the *the* remainder of the tract except what has been conveyed or agreed to be conveyed to Miller and others?

A. I have heard Mr. Lyon remark on several occasions when we would be reading some pleading or remark of Judge Stiles, mentioning the name of Kauntz Brothers, Say that Kountz Brothers had no interest whatever in any of the West Virginia lands, but I have an understanding in a general way that Mr. Luther Kountze is interested in some way or another in some of these lands. I merely suppose that he was interested in the John Green 84,000 acre survey, but whether he is or not I have no way of knowing.

page 508.] Q. Is is not your understanding that Mr. Lyon is in reality the representative of Mr. Kountz or the Kountz Brothers in this litigation?

A. I have never understood that Kountz Brothers had or have any interest at all in these lands. And I have taken it for granted all along that Mr. Lyon is the attorney of the persons holding the

legal title to the property and most likely the beneficiaries including Mr. Luther Kountz.

Q. Your business relations with Egbert Mills and his associates as counsel for the interests they represent is chiefly with Mr. Kountz, is it not?

A. My correspondence and personal communications have always been directed to Mr. Lyon and some formerly with Judge Duke, but I have seen Mr. Luther Kountz in his banking office at 120 Broadway New York. He has dropped in on one or more occasions while I was there to see Mr. Lyon and he has said something in a general way about these West Virginia lands. I never met Egbert Mills or any of his associates that I know of.

Q. You had, I presume no correspondence with them?

A. None at all.

Q. Do you know who furnished the money that was paid for the purchase of the John Green 84,000 acres?

A. I will explain that in this way. I opened negotiations with Mr. J. C. Miller for the purchase of the nine twentieths and while the matter was under consideration in some way or other Mr. George F. Miller and his associates put in a claim that they were to have from Miller a deed to certain boundary on Island Creek and that occasioned some delay in closing up the transaction. Afterwards I told Mr. Miller to pay the $600.00 to J. C. Miller and if I make no mistake I drew a sight draft on Edward C. Lyon in favor of Mr. Miller or the First National Bank of Huntington.

Q. Who besides J. C. Miller was interested in the
page 509.] nine twentieths of the John Green survey if any one?

A. I only know by information. I think there was John B. Wilkinson, J. B. Ellison and Z. T. Vinson.

Q. At the time of the filing of the fifth amended bill who were present in the interest of the filing of such bill?

A. I dont know that I catch the meaning of that question. I can only speak for myself. There were other lawyers attending court who were also interested in this case. Mr. John A. Sheppard Judge T. H. Harvey, and myself were in *atendance* at that term

and we were all interested in this case and Mr. Lyon was there and he had no other business that I know of than to look out for the interest of his clients .

Q. Mr. Lyon was with yourself and Mr. Sheppard and Judge Harvey at the bar and in consultation with the gentlemen mentioned during the discussion of the question of the State's amending its bills, was he not, and was in accord with you and Mr. Sheppard on that question?

A. I have no distinct recollection that he was in court, but at the same time I have no earthly doubt that he was and I am quite sure that he concurred with Mr. Sheppard and myself in our opinion as to all adverse claimants should be brought in under the statute.

Q. Mr. Shepard participated with you in the argument in support of the proposition that the State should so amend its bill as to bring into the record the persons mentioned in Mr. Kings answer filed in 1896 and such others as had acquired claims or interests under them?

A. I have no distinct recollection of Mr. Sheppard arguing the case, but I have no doubt he did, if not he concurred with us. I remember of J. S. Marcum, Judge Harvey Judge Stiles and myself taking part in the discussion but dont remember any one else.

Q. The part that I (Stiles) took was in opposi-
page 510.] tion of the filing of an amended bill was it not?

A. Yes sir.

Q. The fifth amended bill as it now appears on file had previously been prepared and circulated about the bar among the counsel in favor of filing an amended bill during the discussion of that question and upon the ruling of the court was immediately presented and filed was it not?

A. The bill had been prepared as I understood by John B. Wilkinson and J. S. Marcum and if I remember right we asked Mr. Marcum to see the bill and I think it was shown to Mr. Sheppard, Mr. Lyon and myself at the hotel before it was presented in court. I think after the noon hour the bill was presented by Mr. Marcum but I dont remember of it being circulated among the

members of the bar, but I suppose those who wanted to see it had the opportunity to *to* so during the discussion. There was nothing secret about it and nothing to be ashamed of that I know of.

Q. There had been a good many changes of interest from the persons mentioned in King's answer filed in 1896, which were to a great extent traced out in the fifth amended bill, were there not?

A. There appears by the bill to have been some changes of ownership. I recall of course the lands I had bought since that time and I think several persons had died meanwhile. I think Chap Browning for one and Major Neighbert for another and there might have been others.

Q. Mr Wilkinson was making common cause with you and your associates against Mr. King in behalf of the general opponents of Mr. King?

A. I understood that he was associated with Judge Harvey in defending the Neighbert lands. He was then subsequently employed as I understood it by W. W. McDonald and we understood, of course that he was on our side of the case and in full sympathy with us.

page 511.] Q. Was not Judge Harvey a co tenant or co claimant with you and Dickinson and Caldwell in some of the lands claimed by you?

A. He was.

Q. He was acting in your common interest I suppose?

A. Judge Harvey was, I presume, so far as I know.

Q. You appeared, I believe, as counsel, or contributing to the securing of counsel upon both applications for writ of prohibition, did you?

A. Yes, sir, I assisted personally in both and contributed to Mr. Brown's fee in the first one, but contributed nothing that I now recall in the second case.

Q. Aside from the counsel who appeared on the briefs, Mr. Holt, your partner, and W. P. Hubbard participated in the argument upon the second application. Do you know by whom Mr. Holt was employed?

A. He was employed by and through Mr. Lyons, as I supposed,

for the trustees and the beneficiaries, whoever they are. I was not present in the Supreme Court when this case was argued, at Charlestown, I think it was.

Q. You spoke of a stipulation between Mr. McClintock and Mr. King with reference to a continuance of this case, when pending in Wyoming, upon certain terms and conditions. You were no party to that stipulation, were you?

A. Was not.

Q. Have anything to do with it?

A. Nothing whatever.

Q. Not consulted with reference to the making of it?

A. No, sir. I was told of its existence; had no doubt but what it would be strictly observed.

Q. You are acquainted with Judge Duke, are you?

A. I am.

page 512.] Q. Do you know what interests or persons he represented in the various phases of this King litigation and of this case?

A. Not from personal knowledge.

Q. Did you, from information gained from him or the persons he represented?

A. I think not. I have always understood, as it seems to be generally understood, he represented about the same interests that Mr. Lyons is supposed to represent.

Q. Can you state the names of the parties to this suit that you now represent?

A. Not off hand, I can not. I will make and file a list with the Commissioner in answer to this question.

Q. Did you see any draft of the fifth amended bill other than the completed bill as it was finally filed?

A. Not that I recall now. I do not remember any changes in the bill after it was shown to us at the hotel. I am not saying that there was not some; simply that I don't remember of any.

Q. Was there not a good deal of consultation between yourself, Mr. Sheppard, Judge Harvey, Mr. Wilkinson and counsel for the State at Mr. Wilkinson's office about this bill and its terms and the

proposition of submitting the matter to the court prior to its submission to the court and prior to the final completion of the bill in its present form?

A. I dont think Mr. Sheppard, Mr. Lyons or myself were in or about Mr. Wilkinson's office at any time or consulted with him about the matter, 'though we may have seen him at the hotel and may have referred to the bill, but if so, I have not any recollection of it now. Judge Harvey was most likely about Mr. Wilkinson's office, but I don't know that he was. Mr. Marcum, if I remember right, said at the hotel that he intended to present that bill to the court and ask the court's advice as to whether it should be filed and these people brought in or not. He said he was

page 513.] unwilling to assume the responsibility of bringing in all the citizens whose names had been mentioned in your answer, not knowing their wishes in the premises.

Q. You say you had no difficulty in determining that the supposed corner discovered by Pleasants had nothing in it. What led you to that conclusion?

A. Well, it was pointed out as being located on top of that ridge between Race and Pawpaw Forks and not over two miles, if that much, from Knox Creek and the location was not up to the description, and I saw nothing but a sugar tree snag, and I don't remember just what the report of the matter was, but Claude Gaugot had been up to the place and had told me what he found.

Q. Did you go to the place yourself?

A. I did not.

Q. Did you understand that it was reported that two or more marked poplars had been seen near where the sugar tree stood?

A. No, sir; I understood that there had been two poplars standing in that vicinity,—that is, not very far removed from the sugar tree snag, but I don't think that anybody ever claimed that they were marked at all. My recollection is, that Mr. Mose Charles claimed to have seen marks on the sugar tree some twenty years before perhaps.

Q. When you came up to Dan Justice's how long did you re-

main outside the gate before you dismounted and went to the house?

A. I took no note of the time, but I would guess not more than ten or twelve minutes, and I don't believe hardly that long.

Q. How long did the shower last that you have spoken of?

A. I don't remember, but only a little while. It commenced to rain, sprinkle, before we got off our horses and continued some little bit after we sat down in the porch, but I think a very little while.

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Q. Was it a short sharp shower?

A. Indeed, I do not remember. I think it was simply a cloud passed over and probably rain and sun shining at the same time. I don't remember it as being a hard shower at all, but it was enough to wet the weeds.

Q. What disposition did you make of your horses when you came up to the house?

A. We hitched them to the fence down about the gate there.

Q. Did you unsaddle them?

A. I dont remember that we did; may have done so, but I don't remember that we did.

Q. How many persons were there about the premises during the time you were there at Dan Justice's?

A. There were Mr. Sheppard, Mr. Gaugot, Mr. Harve Charles, Dan Justice and I think when we first went Mrs. Sarah Justice. If I am not mistaken, Juliana was out, supposed to be 'senging, when we first got there; that, though, may have been the second trip. I know she was sitting there on the porch when we came down from the stumps and before the second trip up to the stumps. I remember that very distinctly.

Q. There were five men and two women about the house, I suppose, and a good many children, were there not?

A. There were some little tow-headed boys around, and I saw on one of the trips there his son Fred. I think he is the boy that went after Miles Lester, over on Rock Lick.

Q. Are you certain whether he was there the first day or not?

A. No, I don't remember him being there the first day at all; nor I don't remember any grown children the first day.

Q. If two members of that party had been lost to
page 515.] view for a few moments, would it have been a circumstance to attract your attention at the time or abide in your memory afterwards?

A. No, not likely; but I was a stranger there and I was taking note in my mind of the things that were occurring.

Q. You would not have regarded it with suspicion or thought anything about it if Mr. Justice and Mr. Charles, or either one of them, and any one else had been seen in conversation beyond your hearing, would you?

A. No, sir, I would not, but I know that we had no more than sat down on the porch, on chairs furnished to us by Dan Justice himself, when he stepped to the edge of the porch, next to the upper corner, close to where I was sitting, and remarked: "If it is corners you'ns want I can take to to them in five minutes". And I immediately inquired what kind of "corners" they were, and he told me "two poplars and a sugar tree", and pointed out the locality.

Q. Do you not know that it is an almost inviolable custom of the country that when one of the natives has anything to impart, whether of great or trivial importance, or none whatever, he takes some one around back of the house or off into the woods to make his communication.

A. No, sir; I know no such rule or custom.

Q. How long did you remain at Dan Justice's place the first time you were there?

A. Well, I would judge that we were there something near an hour, more or less. I know we made two trips up to the stumps on that occasion. We had had our lunch at the noon hour and then we passed down the creek that evening.

Q. About what time of day did you reach the house?

A. I would judge about one o'clock, or something like that.

Q. Are you certain that there was no communication between Dan Justice and Harve Charles apart from the rest

page 516.] of you at any time during your stay there?

A. No; there may have been communication between them apart from us during the time we were there.

Q. Did you notice any?

A. No, I do not recall any. After he made this remark about the "corners", immediately on our taking seats and before there was any opportunity to conceive of the fixing up between him and Harve Charles, and shortly after that, we went up to the stumps and we came back and sat down on the porch. I was sitting, I think, next to Dan, and his wife Juliana was sitting close by, and I asked this question of Justice: "Do you know of any one else to have seen these corners and the marks on them?" He did not answer promptly and Juliana spoke up and said: "the boys was here that day and helped to cut that tree down", and he turned to her and said, "I expect you had better keep your mouth shut". The idea that there was conspiracy by Dan Justice and Harve Charles to impose fictitious corners on Mr. Sheppard and myself is preposterous. There was no such thing as that thought of or dreamed of by us, and I know there was no opportunity for a thing of that sort until after Dan had told us what was there, and then there could not have been any occasion for a thing of that sort until he told us where the corner was and what it was and how it was marked.

Q. And you have no recollection either of seeing Dan Justice and Harve Charles together off by themselves or of missing them from your presence during the time you were there?

A. No. There may have been a communication between them on the way up to the stumps, either the first or second time, or between those two visits at the house, for aught I know.

Q. How long were you seated on the porch of the house when you first went up there and before going up to the stumps?

A. Well, I have not any recollection of just how

page 517.] long we were there before going up to the stumps, but I am confident that it was not over five or ten minutes.

Q. Then Dan, when you first met him down by the gate seemed reluctant to impart any information whatever, did he?

A. He did. He did not seem to know definitely where Sell crossed. That was one thing we wanted to find, to locate with a view of searching above and below for the corner, and he did not seem to know just how long Sell had stayed on the Creek when he got to it. He hesitated about his answers, and first one and then another would ask a question. Mr. Sheppard, I know, asked several.

Q. Did you understand that he was living there when Sell ran the line across the Creek?

A. We never asked anything about it, where he was living.

Q. How long had you been in the Knox Creek country and at Harve and Mose Charles' before going up to Dan Justice's?

A. We had not been at Mose Charles' but a few minutes, and that was on the day we went up to Dan Justice's. We did not go into his house. I do not think Mr. Sheppard or Harve Charles got off their horses. I got off with *Gaugot*, I think, and went to the smokehouse and looked at the sugar tree snag. I would not be certain whether we went to Daniel Justice's the first day after arriving at the mouth of Pawpaw or whether it was the second we put in in going to the supposed location of the four white oak corner.

Q. Do you remember what day of the mouth you were at Dan Justice's?

A. No, sir, I don't, off hand. I think it was in the neighborhood of the 20th of August, or 21st—somewhere along there.

Q. The sugar tree snag was still at Mose Charles'

page 518.] smokehouse when you went around to Dan Justice's?

A. Yes sir.

Q. Did Mr. *Gaugot* see the snag at that time?

A. I am not positive, but it is on my mind that he went with me to the smokehouse. I gave instructions then and there to have that sugar tree snag taken back to its former location, and it was reported to us on our return that evening that it had been taken up, and the charges, whatever they were, paid by Mr. *Gaugot*. I

think Reece Davis was there and Warden Allison and some others, but I don't remember who they were.

Q. Were the local surveys that you filed yesterday all the surveys you were able to discover in *Buckhannon* County that lie in the immediate neighborhood of the hollow where Dan Justice lives, or the lines of which run through that hollow?

A. I don't think we found any others. When we went to Grundy we found that the records of that county had been at least destroyed, and the Surveyor of the County, I think, had some of the books away out to his house on Fifteen Mile and we sent to him and gave his books a casual glance and looked for deeds on record for descriptions, and made inquiries of different people about what surveys had been made in there and I don't think we ever heard of any more.

Q. Did you make any search for marked timber or for corner trees on Race Fork or elsewhere, beyond the examination of the sugar tree snag and the stumps at Dan Justice's?

A. We did not. Instructed our surveyors when they got in there to keep a sharp lookout for line trees.

page 519.] Q. Were the poplar roots that you discovered in the depression near the lower poplar stump sound or decayed at the time you were there with Mr. Reddy?

A. I did not examine them particularly, but simply observed them casually lying there on the ground, and they were dead and I suppose partially decayed. I gave them no thought at all as being roots from the poplar that is said to have stood in that depression, *if they ever did stand there. I don't look upon them as any evidence at all.*

Q. All the lines that Mr. Reddy ran in executing the order of survey and all the measurements that he took, and which you describe or refer to in your examination in chief, were reported by him in this case, were they not?

A. I think so, sir. He failed to put on his plat until he was giving his evidence, and then at my request, the line from the white oak, two birches and hickory corner to the supposed lynn corner. He ran and measured that line on the ground on the call

as given in the R. D. Coleman survey and then went back and ran part of the way up on the bearing given for that line in the May 800-acre survey and when he got opposite the stumps he measured over to them and quit.

Q. His report gives the running of that line from the two birches, white oak and hickory to the alleged triple lynn, does it not, and his plat indicated the position of the supposed triple lyan when originally filed?

A. The report and plat will show for themselves, but that is my recollection of it..

page 520.] Q. The report also refers to certain other trees and stumps that are not represented upon the plat, does it not?

A. I don't know, Judge. What one do you refer to. I think there was some mention either in the report or on the plat of the sugar tree stump near the supposed corner there. It is mentioned in one, I think, and omitted in the other, but which I don't remember. Some other stumps are referred to there that are not put down on the plat, is my recollection. We did not undertake to show every detail. That may be.

Q. A poplar tree will last a great many years after it is cut down or falls out by the roots, will it not—almost as long as any tree in the Virginia forests?

A. I do not know how long a poplar tree will last. I have not much of an idea, but I would not be surprised to see a part of a poplar tree twenty or twenty-five years after falling.

Q. Or even fifty?

A. Yes, I would not be prepared to believe it would last fifty years on the ground where it is shady in the woods; though I don't mean to say it would not last that long. I don't know, a good deal depends upon the condition of the tree when it falls. If it is yellow poplar and absolutely sound it would last much longer than one that was decayed or hollow or rotten.

Q. Did you notice whether more than one of the logs lying

in the Justice hollow below the lower poplar stump was trimmed for slipping, or not?

A. No, I do not remember that I did.

Q. Were you ever a surveyor or ever engage. to any extent, in surveying?

page 521.] A. No, sir.

Q. When you took the statement of Dan Justice with reference to the stumps back of and above his house and while he was employed by yourself or clients during the surveying done by Stone and Mathews, did you expect to use him as a witness in this case?

A. We did. I might say we expected to use as witnesses all of those who gave a statement, with the exception of Simmeon Justice, and when we took his statement we expected to use him, but we were told by somebody on the Creek that he had been impeached in Judge Holt's court in revenue cases or government cases of some sort, and we did not intend to use him.

Q. Where did you see Dan Justice and Morgan Justice last week, Saturday?

A. I saw Morg at Hurley and also at Dan's house, and I saw Dan at his house only.

Q. Did you go there for the purpose of seeing them?

A. Yes, sir, I went there to see Dan. I did not go to see Morg. When we went there to take depositions at Hurley the last time— I do not know what date it was—we left Claude Gaujot there to see Dan Justice and his mother, to see if he could get either the original or copy of the release, that was supposed to be in the possession of one or the other, given by Mr. King on certain lands at the time Dan and his people were at Williamson to swear for Mr. King, and word came to me from Mr. *Gaugot* that Dan said for me to come up there on that particular Saturday, that he thought it would be well enough to go with me over to his mother's and get the paper. We went to Hurley and it seems that Mrs. Justice was there and she showed

page 522.] us the paper and Mr. *GGaugot* took it in, with her permission, to the typewriter there and had two cop-

ies made of it, returned her the original and gave me one copy and retained the other himself. I then went up to Dan's house, asked Morg to go along and he went along. John Harrison Lester was there and brought the horses down for me and I asked him to go along with me, and he did so. Claude *Gaugot* stopped and stayed all night with McInturf and did not go up. I was at Dan's house a few minutes and asked permission to go again up to the stumps, and I went up, came back to the house, bid them good day and went over and stayed all night with Levi Lester, came to Devon Sunday evening and home Sunday night.

9. Did Elizabeth Justice tell you that the agreement to release her land was made some three years ago or more by Mr. Dickinson, perhaps ratified by myself by letter to her or to her son James at that time?

A. No, she made no statement of that kind. I see that the agreement recites that "pursuant to" some sort of an agreement made in 1900.

Q. The tract of land was a piece upon which she had lived for a good many years, was it not?

A. I know nothing about that.

Q. The agreement purports to have been in pursuance of a promise made a long time ago?

A. I think it recites, pursuant to some agreement or arrangement made in 1900, if I mistake not. I will file the paper with the commissioner and it will speak for itself.

Q. Did she tell you that she came to me while we were at Hurley taking depositions, or to take depositions, and say that she had been waiting three years for her deed and that I told her she would have had it long ago if the land had been so surveyed as to describe it and that having been surveyed I would see that she got her deed as soon as I could get time to attend to the matter.

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A. No, she made no remark of that kind to me at all. I asked her no questions.

Q. Do you remember seeing her or some old lady detaining

me in the street as I was coming down to take the train the noon we left Hurley?

A. I did, and understood at the time that that was Dan Justice's mother.

Q. Did you learn from Morgan Justice that the so-called release to Simeon was a compromise settlement of the adverse claim of title, under which Mr. King reserved all the coal and rights of way and a portion of the timber upon a tract of land that had long been held by *Simmeon* Justice and his granddaughters adversely to Mr. King and with the provision that the timber should not be sold to the Ritter Lumber Company or to any person without Mr. King's consent, and was not a gratuitous release, and that a common contest was to be made against Mr. Ritter's adverse claim to the same land or his attempt to extend his tram-road over it?

A. I had no such information. I had understood from somebody that his land was embraced in the release to *Simmeon* Justice and I asked him that question myself, and he said that it was, but gave none of the terms or conditions of the release.

Q. You did not understand that he had any land himself except such interest as he might have under *Simmeon* Justice?

A. Well, I had no knowledge at all of his owning or not owning any land. I had simply heard that his land was embraced in the release to *Simmeon* Justice.

Q. Do you remember who had told you that?

A. No, I do not. I think most likely Claude *Gaugot.*

Q. Did you know or learn from any source that
page 524.] a compromise with Harve Charles had been made and entered in the form of a judgment three or four years ago, or while at Abingdon, by which his land was to be released, reserving right of way, etc.?

A. No; I think when we went over there Harve Charles spoke of some conditional compromise with Mr. King, but his land, I think, was to be reconveyed to him if the Gilbert Creek line was established. Or, perhaps he said, if on the final trial his land was excluded from the original survey—I think that was the way it

was put to us—that he was to have it back, whatever he granted or released to King, was to come back to him if it fell on the outside of the lines.

Q. You consider that as putting a premium upon the establishment of the Gilbert Creek line?

A. I never thought anything about it, except as a mere conditional settlement between you and Charles.

Statement by Mr. Sheppard: The production of the release, or a copy, which is admitted to have been given by Mr. King's representatives, and a certified copy of the order entered in the Circuit Court of the United States for the Western District of Virginia at Abingdon is the best evidence and we would like to have them produced.

By Judge Stiles: Harve Charles is not a party to this case, nor a witness in it up to the present time and the production of any papers that might relate to his affairs would not be material, nor in any way proper.

By Mr. Sheppard: We are advised that after Mr. King or his representatives induced Dan Justice to change his statement about the existence of the corner that Mr. King's representatives also induced Harve Charles—whose name is H. G. Charles—to give them a statement in writing, and the consideration of that statement was a written release of the lands and timber of Charles.

We understand that Mr. King's representatives have
page 525.] that written statement and his counsel present, we think, have a copy of the release given to Charles, and before any further oral examination is made upon the subject of those papers we demand their production. We do this in view of the apparent connection of Mr. Charles with the discovery of the corner at Dan Justice's and in view of the request heretofore made by counsel for Mr. King that we produce Mr. Charles as a witness.

Q. Is it your understanding that Mr. King has released all claim upon the land and timber of Harve Charles?

A. Yes, except, perhaps, right of way over it.

Q. Who informed you?

A. I think Charles himself, and perhaps John Harrison Lester.

Q. Before going to Hurley, at which place the witness Curtis Lester was recalled, notice was given me that the deposition of George Childress would be taken at that time and place was it not?

A. That is my recollection.

Q. His deposition was not taken at that time?

A. It was not.

Q. Was he not there in consultation with yourself and other counsel?

A. He was there and we notified him.

Q. His deposition was taken a week or so afterwards?

A. Yes sir.

Q. At this place?

A. At this place. He said he had not been over the ground since he was there during the surveying and he said he had a borrowed horse that he had promised to take back that night and ——— wanted to go to town with a load of cabbage, I believe, the next day, and we were anxious to get out of Hurley on account of high water, or supposed train high water, and we arranged to have Mr. Levi Lester to go and get him as soon as the water got out of the way and bring him here as soon as he got over the ground, and that was done, as we understood.

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Q. Was any communication made by you or those associated with you in the case to myself or any other representative of Mr. King of the discovery of the stumps and alleged corner trees on Race Fork or of the surveying that was done by your direction and connection therewith and with this case prior to the beginning of testimony before the Commissioner?

A. I did not inform you of the discovery and I know of no one else informing you or any other representative for Mr. King about the discovery, and we gave none of you any notice of the survey. We employed, as we supposed, competent and honorable men to go there and do certain surveying, and we expected of course to introduce those witnesses and show the result of that

surveying in this case, and did do so. Their surveying over there was no secret. It was an open book for anybody and everybody that wanted to know anything about it. They maintained a camp on Race Fork near the Sulphur Spring, so I was told, and I saw the signs of it, and I was also told they maintained a camp up on some other place on Race Fork, which was in view of the public.

Q. Did you not announce upon the beginning of the taking of testimony in this case at Williamson on the 7th of May, I think it was, that you would follow the witnesses then in attendance with your other witnesses and complete your evidence as rapidly as possible and expect me to produce and examine the witnesses on behalf of Mr. King immediately thereafter and put in all the evidence as reported on the trial of the action of ejectment, or something to that effect?

A. Yes, sir, we did, and we had not the slightest idea that the taking of this proof would be protracted as long as it has; for we, in fact, expected to get the proof in in time to make
page 527.] the report at our August term of court. That was our drive.

Q. You recited in the original application for an order of survey, did you not, and also subsequent application for the addition of Mr. Reddy as a surveyor in the case?

A. I did, and upon the grounds that I suspected your effort was one to delay the case and not mature it for hearing, and if I had known then what I know now, or what I have been informed of now, I would have opposed Mr. Reddy with all the power I could command.

Q. You opposed any order of survey with great vigor and energy, did you not?

A. I did what I could to prevent its being entered and was much chagrined at the court when it entered it, because I thought that that meant delay of the case. At the time I offered to take you personally over there to the corner, or rather expressed a willingness to go with you to that place, I thought I saw that you had an idea that we did not want you to go over there, but that was a

mistake. We had no objection to any surveying on earth that you wanted to do; said you could select anybody that you wanted and could go over there and do it. Told you that all the time. But you said you preferred to have the surveying done under an order of the court, that there was a kind of sanction to work done under order of the court.

Q. Did you not apprehend that it would be impossible for Mr. King to make a private survey in that neighborhood or that it would be impossible to get any one to undertake it, unless it was made there in conjunction with yourself?

A. No, I did not.

Q. You are aware, I presume, or have been informed that when I did attempt a private survey, even by the County surveyor of the County in another case, since this inquiry has
page 528.] been in progress that the surveyor and his assistants were arrested for trespass and fined fifty dollars?

A. Yes, sir, I do; I have been so informed. When Mr. Reddy went there I did not know of a *sole* in that country who knew that he was going under an order of court. He went in there, did the surveying, came out of there, and I did not know of anybody learning of his having an order of survey, unless he told Dan Justice or some of those people or the man that went in with him.

Q. You and Mr. Sheppard were with him?

A. Yes, sir. We did not go in with him, but he came out with us in the log train.

Q. Were not in there very long?

A. We got in there, I think, and did some work on Saturday evening, and he stayed all night and all Sunday at Dan Justice's and said he went over to Pawpay the next day, and we stayed, I reckon, at Hurley at the boarding house.

RE-EXAMINATION

By Mr. Sheppard.

Q. Do you recall having advised counsel for Mr. King at any time before he requested us to produce Harve Charles as a witness that he had entered into—that Mr. King, through his representa-

tives, had entered into an agreement with Charles, as a result of which Charles had received from them a release of his land and timber? If so, state when it was.

A. At the time that the order of survey was asked for in open court in Cabell County I stated to the court, in the presence of Judge Stiles, that our information was that Mr. King had released the lands and timber of Harve Charles, supposed to be valued at $50,000 and that one of the terms was that he was not to sell that timber to Mr. Ritter. And Judge Stiles did not deny the execution of such a paper.

page 529.] (Objection by counsel for defendant King.)

Q. Was that before the taking of the depositions by Mr. King at Williamson?

A. That was in July, I think, about the 14th and the depositions taken by Mr. King at Williamson were before, on and after the 9th of September following.

Q. The affidavit given by Daniel Justice to Mr. King's representatives at Charleston on the 21st day of April, 1902, filed herewith, marked "Daniel Justice No. 1", says, among other things, that affiant first told said Sheppard that he could not find anything of a corner there, that affiant knew nothing of a corner thereabouts; that said Sheppard repeatedly explained to said affiant that if such corner could be established that it would cut the King survey off to such a fine point that there would be nothing left of the land for King and Wilder to fight over and would help the people at Knox Creek and West Virginia. Did Justice tell me or any of us that he knew of no such corner?

A. No, sir. The statement that you have read is absolutely false and untrue in every particular—with this explanation: that sometime before we left, after we had been to the corners, I think the second time, a map was taken from the saddlebags by Mr. Sheppard, I think, and the two contentions were *shown*, pointed out on the map, and something was said about the quantity that was in each contention; and it was also said that if this Gilbert Creek line was established there would be very little land left for

Mr. King. All other parts of the statement is absolutely untrue—manufactured out of whole cloth.

Q. Affiant further says: "Affiant after listening to the conversation of said Sheppard went to one side and talked over the matter with Harve Charles and after thinking it over

page 530.] further affiant told said Sheppard that there was a corner or marked tree that were cut down and were two poplars and lynn and sugar tree". Is that true?

A. He said just what I have detailed, and wherein that is inconsistent with what I have stated it is untrue. In other words, there was no private or secret communication between Harve Charles and Daniel Justice, even if then, he had told about the existence of the two poplars and the sugar tree.

Q. Affiant further says "that on or about July or August, 1901, John A. Sheppard, a lawyer of Williamson, W. Va., in company with H. G. Charles of Knox Creek, came to affiant's house" and then details what I have above repeated from the affidavit, with other things.—Do you know where I was on that day at the time he refers to?

A. Well, you and I went to Knox Creek together, and we stayed together all the time until we left there together, and you were not at Dan Justice's at any time on that trip without my presence, and I never heard tell of you being there before.

Q. The affiant also states: "Said Sheppard, Campbell and *Gaugot* (speaking of the second time they were there) wanted to know who affiant could get to say that the said stumps were a corner, and affiant told them that he could get some men to say so and said Sheppard and Campbell told affiant to go and get them." Is that statement true?

A. It is not. Not that form. It is true that I asked him immediately on our return from the first visit to the stumps if he knew of any person else who had seen the trees and the marks on them, and he hesitated somewhat, seemed to be thinking, and his wife spoke up and said "Why, Daniel, those boys were all here on the day of the working and helped to cut those

page 531.] trees down". And he said, "I expect you had better

keep your mouth shut"; and then he proceeded to tell us about the three Lester young men and his brother Wayne being there on that day, and I think he said, in connection, that Miles Lester was there on the same day, and I think we did ask him if he could get those people there where we could see them and interview them; and he did, with the exception of John Harrison Lester, who was sick, and you and I went there with him to his house together.

And further this deponent sayeth not.

[signed] C. W. CAMPBELL.

JOHN A. SHEPPARD, another witness introduced by the contesting defendants, after being first duly sworn, testifies as follows:

EXAMINATION

By Mr. Campbell.

Q. State your age, residence and occupation.

A. I am forty, past; residence, Williamson; and a lawyer.

Q. What connection did you have with the case of the State of West Virginia against John V. LeMoyne and others, instituted in Logan Circuit Court in June, 1893?

A. I was counsel for the State.

Q. Who was Commissioner of School Lands of that county at that time?

A. U. B. Buskirk.

Q. You will please give the history of your connection with that case and your interviews with Judge Stiles and Col. Wilder, as representatives of Henry C. King, leading up to the decree that was entered on the 30th of September, 1897, in Wyoming County in this case.

uage 532.] A. I first saw Judge Stiles, I think about June, 1893. My recollection is not distinct as to the date. I was then living at Logan Sourt House and met him and a gentleman whom I learned was one Mr. Mann, a lawyer, I believe, from Petersburg. They were going to Logan Court House and

I rode over with them. The next time that I met him, as I now remember, he and Col. Wilder came into my office at Logan Court House, told me that they owned the western Morris grant of 500,000 acres and they understood that I represented the Commissioner of School Lands of the State and had a suit to sell that land, and made some inquiry about the condition of the case. I told them what the condition of the case was and in course of the conversation they stated that they wanted to straighten up their title and redeem the land from forfeiture. I told them that their progress along those lines would depend somewhat upon the course they wanted to pursue themselves, and referred to the fact that Mr. Z. T. Vinson, representing John R. Reed, Trustee of the Swan estate, had been trying to bring in the citizens who claimed land and that he had met with considerable opposition; that if they adopted the course that Mr. Vinson was pursuing it would be considerable time before they could fight out all the questions with the citizens. Col. Wilder said that he would lose every cent that he had invested in that land before he would sue one of those natives to take his home from him; and I was very much impressed with his manner of speech and felt that they would get on smoothly in the country there.

The case of the State against LeMoyne was brought up on several occasions in court, but no very great progress made in it. The next time I have any distinct recollection of seeing Judge Stiles I was sitting in my office at Logan, sometime after the time I have referred to, when a son of H. K. Shumate, a lawyer then representing Mr. King, along with Judge Stiles, came to my office and said that his father and Judge Stiles would like to see me down at Mr. Shumate's office. I went down, and upon entering the office I found Mr. Shumate and Judge Stiles. Judge Stiles proceeded to talk about his desire to get his land straightened up and get an order entered in the case of the State against LeMoyne. He had on the table before him a volume of the West Virginia Reports containing the case of McClure v. Mauperture, which had been appealed

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from the Circuit Court of Wyoming County. He reviewed that case to me at length and complimented it, saying that he thought it was a wise course to pursue in cases of that kind and that it would take too long and involve too much expense to have an order of survey in the case of the State against LeMoyne to locate the junior claimants and the portions of the tract owned by the State and wanted me to agree that we would enter such an order in the case of the State against LeMoyne as was entered in the case of McClure against Mauperture, by agreeing upon an estimated number of acres as liable to sale or redemption, estimating the taxes and then taking a decree in Mr. King's favor redeeming the land. I asked him if he would expect the decree in the case of the State against LeMoyne to follow the decree in the McClure case against Mauperture in redeeming the whole tract of land while taxes were paid only on an estimated portion, and he said that he thought that would be proper. He also said that he realized that the Commissioner of School Lands, Mr. Buskirk and especially me, as his attorney, had done a great deal of work in the case and if such an order as that was
page 534.] entered that he would expect to liberally reward the Commissioner of School Lands and me for the labor we had done. I formed the impression, whether correct or incorrect, at that moment that it was his desire to influence me by his proposition to enter a decree in that case, which I did not believe was right. My final *responce* to Mr. Shumate and Judge Stiles was that I had but one way of determining the number of acres liable to sale or redemption, and that was by the report of the surveyor; but one way of determining the amount of taxes due, and that was by the report of the Commissioner; and but one way of determining the rights of Mr. King or any other land claimant, and that was by the decision of the court; and after that I went back to my office. At the next term of the court, as I now remember, Mr. Shumate called my attention to the fact—called the court's attention to the fact—that the order of publication in the case of the State against LeMoyne proceeded against only an

undivided three-fourths of the tract. As my memory serves me now, he had not appeared for Mr. King up to that time. In this I may be mistaken, however. On my motion the case was dismissed. I did that for the purpose of getting rid of the defective suit and bringing another suit against the whole of such portions of the Morris grant as were then owned by the State. The allegation in the answer of Mr. King to the answer of C. W. Campbell and others as contained in clause 34, to the effect that I dismissed that suit to prevent Mr. King from redeeming, is not true, As the representative of the State I never had any objection to Mr. King redeeming any lands that the State had the right to proceed to sell, and so told Judge Stiles and Col. Wilder. The allegation in the same clause of the same answer, that while pretending to represent the State in that case I really represented sundry of the persons named in the fifth amended bill, is *absolutely* false. I did not at that time represent any man in his claim to land in opposition to claim of Mr. King. I represented the State exclusively in that case. After the suit of the State against LeMoyne was dismissed I was informed that Mr. Shumate, and I believe Judge Stiles, went at once to Wyoming County and procured the representative of the Commissioner of School Lands—the attorney for the Commissioner of School Lands—there to institute suit against the tract claimed by King to enable King to redeem. I regarded this as an effort to defeat me in what I thought was my right to continue my case, and at the next term of the Circuit court of Logan County, on my motion, the court reinstated on the docket the case of the State against LeMoyne.

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By agreement of counsel the taking of these depositions is adjourned until 1:30 o'clock this P. M. at the same place.

The taking of depositions resumed at 1:30 o'clock, pursuant to above agreement.

(State of Mr. Sheppard cont'd.) I had given notice, as I remember, to counsel for Mr. King of my motion to reinstate the case, and I think it was at that time the case was reinstated that

they appeared and filed answers for LeMoyne and King. The record will show whether I am correct; I have not
page 536.] looked to it on that subject. While the case of the State against LeMoyne was off the docket at Logan this suit was brought by Col. Childers, attorney for Commissioner of School Lands in Wyoming County. I do not remember whether Mr. Campbell was along at that time or not. I believe however, he did not attend that term—I am in doubt, however, about this. I do know that I went there with a view of trying to get that case dismissed and when I got to the County Seat of Wyoming I went at once to the Clerk's office of the Circuit Court to get a file of papers in this case. I got them and took them down to the hotel for examination. I found in the file the summons, the affidavit for an order of publication, and I think the order of publication, and the caption of a bill. Only the caption of the bill had been written, down to the expression "The plaintiff complains and says that". Col. Childers came down and talked in rather a harsh manner to me about getting the file of papers before he had an opportunity to complete his bill. That evening, as I now remember, Mr. Shumate and Judge Stiles reached the town and the next morning the bill had been completed. I was at the Wyoming court at the time Mr. Campbell speaks of being there. Whether that was the March or June term of that court, 1894, I do not remember. Being reminded by Judge Stiles, the case was not matured from March court, I believe I can now say it was at the June term. We took with us the case of Smith against Chapman, reported in 10th Gratton, and so far is I was concerned I only expected the Judge of that court to dismiss that
page 537.] case when he had that authority called to his attention. We had along with us also the original papers in the case of the State against LeMoyne and I think the cases of the State against Geo. K. Taylor, involving he 213,000 acres, and the case of the State against H. C. King involving 500,000 acres, and the George K. Taylor 187,000 acres, as well as the suit of the State against John Green's heirs involving the 84,000 [illegible]es, and the State against Alexander McClintock and others involving the

142,000 acres. The attention of Judge McClarity was called to the pendency of the suits in Logan County and to the authority of Smith against Chapman by Mr. Campbell or myself, and at that time it was instructed by Col. Childers, the attorney for the State, that I had no right to appear in that case and represented no one—when Judge McClarity permitted me to call his attention to defects in the case as friend of the court. I did call the court's attention to a defect in the order of publication, and my recollection is, that it was quashed by the court. I appeared there on several other occasions and in some way, by permission of the court and as friend of the court, and caused several other orders of publication in the case to be quashed.

My interest in the case at that time was to try to protect my own case in the Logan Circuit Court so that I could proceed with it and tried in every way I could to get the Wyoming case dismissed, and if I could not succeed in getting it dismissed I wanted to delay it. This went on through the years 1894 and 1895. At the June term of the Wyoming court in 1896, I believe the answers of King and McClintock were filed. I was

page 538.] not present, as I now remember, at that term of court and I think that answer was filed by Mr. Turley perhaps.

Judge Harvey was elected Judge of the Circuit Court for Logan County in 1888 and I was attorney for the Commissioner of School Lands and brought suit for the sale of school lands, in the name of the State of West Virginia, during his term of office. Judge Doolittle was elected his successor in 1896 and he appointed a different Commissioner of School Lands and a different attorney took charge of the business.

I did not represent any interest at the time I appeared in the Wyoming case except the interest of the Commissioner of School Lands, and for the purpose of protecting my own case in Logan Circuit Court, until I appeared in the Wyoming case representing McClintock at the instance of Mr. Z. T. Vinson. I was not the attorney for the numerous persons in Logan County or elsewhere who were then opposing Mr. King's redemption. After the an-

swer of McClintock had been filed, as well as that of Mr. King, I appeared as the representative of McClintock for Mr. Vinson before J. R. Robertson, the commissioner in Chancery to whom the case had been referred, and we took the deposition in part of Mr. Sell, which, I think, appears in the printed record. During the taking of Mr. Sell's deposition and before it was concluded Judge Stiles and I agreed to continue the case until a future day and we came away. After the continuance of that case and before we returned to resume the proof before the Commissioner in Chancery, Judge Stiles became anxious to submit on briefs, without waiting for it to reach the argument docket, the case of King against Mullins and McClintock, then pending in

page 539.] the Supreme Court of the United States on appeal. Judge Stiles proposed that we enter into an agreement whereby that case might be submitted. I was anxious to delay the Wyoming case and proceed with my Logan case, and I told him that if it was agreeable with Mr. Vinson we would consent to submitting the case in the Supreme Court on briefs if he would let the case in Wyoming be continued until the Supreme Court of the United States had passed on the Mullins case. Judge Stiles wanted also to have the same agreement to continue the Logan case, but I refused to do that and told him that I wanted to proceed with that case. We had a consultation with Mr. Vinson and reached an agreement, which was reduced to writing, I think, in the hand writing, perhaps; of Judge Stiles, and which he carried with him to Charleston from this place. Afterwards I received a letter from him, as I now remember, under date of November 23rd, 1896, enclosing to me the original draft and two typewritten copies of the agreement to continue that Wyoming case, stating that I could retain one and send the original on. I think it was on the 25th of November I received his letter with the copies of the agreement and acknowledged receipt to Judge Stiles and also sent a copy of the agreement to continue to J. R. Robertson, who had been the Commissioner in Chancery in the case but at that time was Commissioner of School Lands, he having been appointed by the newly elected Judge, and his brother

D. A. Robertson, a young man who lived with him, who had been appointed Commissioner in Chancery and the case of the State against King referred to him. I afterwards saw J. R. Robertson on Island Creek at the sale of the effects by Prichard and Brubaker and had a talk with him about the agreement

page 540.] to continue the case, which he acknowledged he had received, and he also assured me that no steps should be taken in that case at all without my knowledge, that he would notify me if anything was proposed to be done. I fully relied on the Wyoming case being continued and had no thought whatever of any action being taken in the case. The agreement was signed by Judge Stiles for Henry C. King and for Alexander McClintock by me. Afterwards I saw Mr. Robertson at Iaeger. Judge Stiles and I had been taking depositions in the Logan County case, which had then been removed to the Circuit Court of Kanawha County in 1897. We had been at Welch for several days, while Judge was taking depositions on his side of the case. We went from there to Iaeger, as I now remember, about the 26th of August. I would want to refresh my memory by referring to the date before being positive. While we were there at the house of Mr. Mann taking depositions, I heard passenger train No. 11 whistle for the station and Judge Stiles asked to be excused to go to meet that train. We suspended the depositions and he went. After the train pulled out Judge Stiles came back around the lower side of the depot and J. R. Robertson went around the upper side. Shortly afterwards Robertson came down to the house of Manns and asked if he could get dinner. He was informed that he could and came in on the portico. Dinner was announced and all of us except Judge Stiles and J. R. Robertson went to dinner; while they went into Judge Stiles' room, and they remained there until after we had eaten dinner and for sometime afterwards. It occurs to me now that they were in there in consultation at least an hour and a half; they came out then and went to

page 541.] dinner and afterwards Robertson left. Judge Stiles that evening told me that he would not be able to go on with his depositions and we stopped, as then understood, at

the conclusion of the evidence of Noah Birchfield, but without him signing the deposition, as I remember, with the understanding that it would be signed when we went back to complete the depositions. Judge Stiles said that he could not go on at that time because he had to go to Ritchie County to do some surveying on some lands in dispute in an oil case and that he was going to take W. D. Sell along with him to do the surveying—W. D. Sell, who then lived at Logan Court House and who was the surveyor appointed in the King cases—and from there, he said, he would have to go to Virginia, I believe to Lynchburg, and he would notify me when he was ready to take up the Logan cases, then known as the Kanawha cases. We came down the Norfolk & Western and I got off at Williamson, to which place I had removed before that time, and Judge Stiles went on. Afterwards I received a letter from Judge Stiles asking me if I did not have both copies of the deposition of the witness—perhaps Trent—and I think, if I am not mistaken, that I had both of them and sent one to him. I received another letter from him, under date September 29th, 1897, acknowledging receipt of the missing testimony and saying that he did not know when he could resume the depositions, and saying also that while at Lynchburg he was taken with an abscess on his ankle so that he was unable to get out. This letter was received by me at Williamson, written on the very day the decree of redemption was entered in the Wyoming Circuit Court. It was written by Judge Stiles at Charleston and containing the advices it did I had not the slightest

page 542.] idea that anything was being done during the Wyoming court then in session, or that closed on that day. In fact, I did not think of the Wyoming court at all or anything being done in it in the King case. Mr. Shumate had asked me on the street corner in Williamson just before going to one term of the Wyoming court if I was going, and I told him that I was not, that the continuance of the King case relieved me of the necessity of going. I cannot say positively that it was just before this September term, but it appears to me that it was. Shortly after the Wyoming court adjourned I heard from some

person in town, in the town of Williamson, that Mr. Shumate had said he considered that the King controversy was to be ended, because King had redeemed at the Wyoming court. I at once went to him and asked him about it and he seemed inclined to put the blame on Judge Stiles. I then went to the telegraph office and wired Judge Stiles at Charleston telling him that I had just learned that the King lands had been redeemed at the Wyoming court in violation of our agreement to continue the case and called upon him to know if he proposed to stand by such action. He replied by letter, under date of October 5th. I will file as part of this deposition a copy of the agreement to continue the case in Wyoming, marked "J. S. No. 1", and copies of the several letters of Judge Stiles as one exhibit, marked "J. A. S. No. 2".

I went to the Wyoming Circuit Court at the special term held in November, 1897, and found that after leaving the depositions at Iaeger, stating that he was going to Ritchie County, that Judge Stiles had gone, as I now remember, on the 10th of September to Wyoming County and with the assistance of Mr. J. R. Robertson, the Commissioner of School Lands, and Col. Childers, his attorney, had made up the case for King to redeem. The depositions taken as well as the report of D. A. Robertson impressed me that they were largely dictated by Judge Stiles. I thought I could recognize his language and especially did I think he dictated or wrote and drafted the report of D. A. Robertson, as he was an ignorant young fellow and his report teemed very learnedly with the questions involved in that case, greatly more so than Robertson was able to do. I found furthermore that the record made by Judge Stiles and myself before J. R. Robertson, while the case was pending before him, had been suppressed and not in the file at all and no reference made of it by D. A. Robertson in his decisions. I brought this matter to the attention of Judge Sanders in open court and he awarded a rule against J. R. Robertson requiring him to bring in that part of the record and also the agreement for a continuance of the case which I had sent to Robertson. He brought in, I believe, the part of Sell's deposition showing my appearance in the case for Mc-

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Clintock, but failed to produce the agreement to continue. The only part of the record which showed my appearance for McClintock was the deposition—the caption of the deposition of Sell—and the agreement at the foot of it to continue the taking of the depositions. It was my idea and is now that that part of the case was suppressed from the Judge before whom they expected to present the decree of redemption from finding that there was any opposition to King's right to redeem or any defects in the case. After that we prepared the case for appeal. There were numerous consultations about what course we should pursue to get rid of the decree of redemption which had been obtained in the manner I have stated, and finally I took the Commissioner of School Lands to Mingo County, in which the lands involved in the suit were partly located, as well as his attorney J. S. Miller, and went to Charleston. There we got the Board of Public Works together in the Governor's office and I presented the case to the Board for the purpose of seeing if I could get the Board to take any action in the premises. I explained to the Board that the King survey properly located did not extend west of the line from the mouth of Gilbert's Creek through the mouth of Turkey Creek, that there were quite a number of valuable pieces of vacant land in Mingo and Logan Counties west of that line which, in my judgment, did not belong to Mr. King, that the State had been defrauded of her taxes on the pieces of vacant land west of the Gilbert Creek line for about twenty years. By that I mean that the vacant lands west of the Gilbert line are located in the DeWitt Clinton 500,000 acre survey, the Green 84,009, the George Keith Taylor 187,100 and a small portion in the William McCleary 100,000 acres, and that the State was entitled to collect taxes from these pieces from the claimants, from the formation of the State of West Virginia until the date of their redemption, or that the States were entitled to sell the lands as her own property,—while Mr. King had redeemed under his Wyoming decree by paying taxes only on ten thousand acres, estimated without location, from the year 1883 up to the date of his redemption. This I thought at the time was a fraud upon

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the State, and so told the Board of Public Works. That Board concluded that I was right and called upon the Attorney General and directed him—called the Attorney General in, I believe. Gen. Rucker was then the Attorney General, but as I now remember was not present until the other members of the Board
page 545.] called him in and directed him to appeal this case from the Circuit Court of Wyoming County and if he could reverse it for the purpose of saving to the State the taxes to which he was entitled on the lands I have mentioned. Gen. Rucker took charge of the appeal in that case, and at his request and by his permission through counsel appeared in that case. The other counsel were Mr. Hubbard, Campbell and Holt, and I believe Mr. Brown, and I aided in such way as I could. The result of that appeal appears of record.

(Counsel for defendant King moves to strike out all the foregoing testimony relating to the continuance of the case at Wyoming and the stipulation of the reference to same and to matters growing out of that stipulation, and with reference to the entry of the decree of redemption.)

In 1895 U. B. Buskirk of Logan County had bought timber from M. B. Mullins and was cutting it on Run Creek, when he was enjoined by King. I was employed by Mr. Buskirk for him and Mr. Mullins to appear for them in the injunction case and also to help try the action of ejectment. I aided in the preparation of the papers for the dissolution of the injunction—for the motion to dissolve the injunction—in the defense of Buskirk on the rule issued against him for a pretended violation of the injunction. In the early fall of 1895 the case of King against the Sandy River Land Trust was brought on trial at Harrisonburg, Va., before Judge Paul, and in order to get the benefit of some experience in the trial of the case I went to Harrisonburg and assisted Major Henry and others in the trial of that case. I had no client in that case, but was there for the benefit of the experience preparatory to trying the case of King against Mullins and McClin-
page 546.] tock, which was to be and was tried before Judge Jackson at Parkersburg the fall of the same year. I

took part in the trial before Judge Jackson, which resulted in a hung jury, as one of the counsel for Mullins and McClintock, but I will say appeared for Mullins and McClintock, though I was employed by Mullins and Buskirk and by McClintock at that time. In January 1896 we tried the same case over at Parkersburg and until about the conclusion of that trial I had no client in the King cases except Mullins and Buskirk. At about the close of that trial I was employed by Mr. Stewart Wood, represented there by Judge Elliott, and by Judge Duke and Maj. Jas. A. Nighbert as one of counsel for them in the ejectment cases pending in the Federal courts. From that time on to the present I have been working for the same people and have since been employed by a number of citizens living in Mingo and perhaps some living in Logan County. The cases originally brought in Logan County and afterwards removed to Kanawha hung up after the decree of September 30th in the Wyoming case, and the whole interest was centered in the Wyoming case.

Q. Whatever you did in this case while it was pending in the Circuit Court of Woming County and before the decree of the 30th of September, 1897, did you appear for or represent any one other than the State of West Virginia?

A. Yes, I appeared in that case in 1886 for Alexander McClintock.

Q. Aside from Alexander McClintock and the State, did you appear for any one else?

A. No sir.

Q. Did your employment in the ejectment trial at Parkersburg by Mullins and Buskirk *extent* to any connection or services in this case?

page 547.] A. No, sir; I was only employed by them and paid by them for the trial of the two actions of ejectment—for the two trials of the action of ejectment.

Q. Did you in whatever you did in this case in Wyoming County represent the Pan Handle Coal &c. Company or L. B. Chambers, or his wife, or any of his children, or Z. C. Dingess, or any of his heirs?

A. I never did. I have never represented them. In 1901 our clients requested Mr. Campbell and me to make an investigation in such way as we thought best of the Knox Creek country to see if we could find the southwest corner of the Morris grant. I had heard from one Mr. Pleasants that Mose Charles knew where there was a sugar tree marked as corner tree in the Knox Creek country, between the Pawpaw Fork and Race Fork. Claude *Gaugot* and I went to see the tree. We stayed all night at the house of Harve Charles and in company with Mr. Pleasants and Mose Charles the next day we went to the place where Mr. Mose Charles showed us the place where he said he had seen a sugar tree standing. We found there a down sugar tree, with about six feet of the root; six feet of the lower part of the tree burned away, with the exception of one side which was burned to the flat. It seemed that the tree had burned down. Mr. Charles told us that he had seen the tree there some years before and that it was marked as a corner tree. Mr. *Gaugot* and I made an examination and took a view of the grounds. Some distance away from the sugar tree there were the remains of one and probably two down poplars, but Mr. Charles did not claim that he had ever seen the poplars standing at all or that he had ever seen or heard of any marks on the poplar trees. I saw two or possibly three very small sugar trees where the sugar tree had stood that had been marked, as I thought, by a surveyor perhaps a year or two before.

page 548.] I made up my mind at once that some surveyor in running the lines of some survey there, finding the sugar tree down, had marked the other sugar tree—the young sugar trees as witnesses. I did not then nor at any other time think that that was the corner of the Morris grant, and said so to Mr. *Gaugot* and to Mr. Pleasants, the corner called for being on the small branch of Knox Creek and the place shown us by Pleasants being on top of the dividing ridge between Race Fork and the Pawpaw Fork of Knox Creek. I saw no marks on the sugar tree—on the down sugar tree—at all. Mr. *Gaugot* and I returned to Williamson. I did not know at whose instance the sugar tree snag was brought out to Mose Charles' house. It was not at my

instance, and I would have prevented its being done if I had known it, because I had no confidence whatever in that being the corner of the survey.

While at Harve Charles' house and while sitting out at the end of the house near the chimney after supper one Harrison Charles was there, and I knew him to have been working in the interest of Mr. King, and he became very talkative—is the only thing I can say about it. He was making light of the corner shown us by Mose Charles and in the course of his talk said that that corner of the Morris tract would never be found, that there had at one time been an old corner standing on a branch of the Race fork and that he had heard his father talk about it. I had no confidence in Harry and paid no attention to it at the time; don't believe that I reported the conversation to Mr. Campbell—don't remember to have done so. Afterwards I returned to Knox Creek with Mr. Campbell and Mr. *Gaugot*; we went the first night to the house of Harve Charles and found there quite a number of work-hands, and Mr. Charles' being a small house he was not able to keep but one of us. I am not a good walker, and Mr. *Gaugot* and Mr. Campbell went on up the Creek to Johnson Charles and stayed that night, while I remained at the house of Harve Charles. That was the first time I ever saw Harve Charles, so far as I know. I mean, the first time I was at his house up there with *Gaugot*, and my trip there with *Gaugot* was the first time I was ever on Knox Creek. While there on my first trip I saw and became acquainted with no native that I now remember except Harve Charles, Malin France and Mose Charles and two or three boys working for Harve Charles. On my second trip to Knox Creek, and on the next morning after reaching there, Mr. Charles furnished me a mule and Mr. Campbell and Mr. *Gougot* got horses, I think, one from Mose Charles and the other from Johnson, and we went to the place where it is said the four white oak corner stood. My recollection is, that was on the first day after we got there. On the second day we went to Hurley again and then came back to the mouth of Race Fork and went up the Race Fork. We had determined that we would find

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the place where W. D. Sell and also where Mr. Reynolds crossed the Race Fork in running the line from the four white oaks west and that we would institute search along that line for the corner by putting a number of persons on each side of those lines and having them follow it plumb on through to Pawpaw Fork and on to where the distance would give it out. It was for the purpose of finding where those lines crossed the Race Fork that Mr. Campbell, *Gaugot,* Harve Charles and I started up the Race Fork on that day. When we got to the house of Mose Charles we stopped for a very short time, but I am not able to recall the fact that Mr. Campbell went in to see the piece of sugar tree. I did not get down or go in to see the sugar tree snag, because I
page 550.] did not attach any importance to it. Before starting away from the house of Mose Charles we instructed the men to take the snag back where it came from because we thought it was a corner of somebody's survey and it was only right for them to have the benefit of the snag in case they should need it. Mose Charles, I think, asked some of us to tell Davis, who lived above him, to come down and help take it back. Who Davis was I have not the remotest idea, but we were told that he lived in the next house up there and when we got to Davis' house I told the man whom I afterwards knew as Rece Davis that Mr. Charles wanted him to come down there and help carry the snag back on the hill. Any statement to the effect that I said that I would not take ten thousand dollars, or any amount of money, for the discovery of that sugar tree is either a mistake of the witness or a flight of the imagination, for I repeat that I never at any time placed any value on that sugar tree snag or its location as a corner of the Morris tract. From Mose Charles' house we went on up the Race Fork of Knox Creek until we reached the Sulphur Spring; there we stopped and ate lunch. It was, according to my recollection, somewhat after twelve o'clock, and I think really after one o'clock when we finished our lunch, and I found from inquiry of Charles that we could not get to the William Estep place and do any looking around and get back to the house of Charles that night before dark, when I think I suggested that we

go back down the creek and get an early start the next morning. Mr. Campbell then asked Charles if any one lived up the creek and he said that one man lived up there, a fellow named Justice. Then Mr. Campbell insisted that we go up and see him anyhow, that he might be able to tell us where Sell crossed Race Fork in making his survey. We got on our horses and rode
page 551.] on up to the gate of Dan Justice's house; he was either out in the yard or in the porch, and when we rode up he came out, and as I recollect his position, he got up on the fence by the side of his gate. I think Mr. Campbell asked Justice if he knew where Mr. Sell, surveyor, crossed the Race Fork in running of the King survey. He told us he knew about where they crossed. And probably we asked him if he knew where Reynolds crossed, and my recollection now is that he gave us some information about that that was rather indefinite. Some one of us, perhaps Mr. Campbell or I, I don't know which, asked him how much search, if any, Mr. Sell made on that creek for corner trees, and I think he replied that he did not know but he did not think he made very much. Then I asked him if he knew of any old corner trees standing in that community His reply was, "No, they haint none and I defy any living man to show any such a standing". The words "a standing" struck me with some force. I knew the prevailing opinion among the mountaineers that the best way to get rid of an old survey was to cut down the corners or grub them up and the inquiry flashed into my mind at once: "I wonder if this fellow has ever known of these trees and why does he use such an expression as that?" Then I asked him: "Mr. Justice, if you ever knew of any old corners standing here in this country we would be very glad to know it, and if you know of any that stood here and are now gone we would like to get you to tell us about it." And he did not answed promptly, I says, "Do you know of any that ever did stand here?" He replied, "See here stranger a man can sometimes aix too many G—d d—n questions". On looking up I saw that the man was red in the face, his neck veins were swelling, and that he was mad. Harve Charles then

spoke up and said, "Now, don't get mad. There men are for the people of West Virginia and they are over here looking for these corners and they are not going to bother you in any way." Some such talk as that Harve had to him. Justice replied: "I thought they were Wilder's men" and said "Who are they?" Then Harve Charles told him who we were and introduced us. Justice then asked him if I was the Sheppard who was one of the lawyers in the case tried at Abingdon. I told him that I was. He said: "Well, men, get down and come in." Just at that time it began to sprinkle rain and a summer shower was topping from the hill right near us. We jumped off our horses, took the saddles off, and hurried into the porch, and I remember I was in my shirt-sleeves and caught a few of the larger drops of the shower before I got into the porch. Justice furnished us chairs and seated us on the porch. And just as he got us located he turned around and looking up the branch from his home says, "Men if it is corners you are looking for I can take you to them in five minutes". Then Mr. Campbell, I think, asked him what sort of trees they were and where they were. He says, "Well I seed marks on two poplars and sugar tree and on an old lynn standing by the sugar tree right *yander* in front of us", pointing up the hollow, where he afterwards showed us the stumps. We talked about them until the shower was over, which was but very brief, and immediately after the shower they all went to the stumps except me. I was not well and the weeds were wet and the corn and I was unwilling to go out and get wet. I stayed on the porch while Mr. *Gaugot*, Mr. Charles, Mr. Campbell and Dan Justice went to the stumps. When they came back from the stumps Mr. Campbell asked Dan Justice if he knew af any one else who had seen these trees and had seen the marks on them. Dan Justice's wife was sitting by on the porch and said, "Daniel, them boys, you know, was here the days the trees was cut and helped cut them;" and Dan replied to her by telling her to
page 552.] "Shut up", that women had no business to talk
pagt 553.] so much. While were were there on the porch Dan kept thinking of one and another that they told us were there

when the tree were cut and I would write their names down as they would give them, and notwithstanding the fact that he had commanded his wife to "shut up" he finally turned and asked her what day it was that Miles was over there, and she told him that Miles come there the next day after the lower poplar and beech lynn trees were cut, that she and her brother cut the beech lynn tree, and they both told us that two of her brothers cut the lower poplar, and they both told us that Miles Lester cut the upper poplar the next day after the trees were cut. Then the question arose asto how we would se allthese men and where they lived Dan told us that his brother Wayne lived at Matewan, or about there, and told us where the other men lived, and while we were considering the question as to whether we would go and see the men or have them come there to the spot to see if they could identify the stumps as the stumps of the trees they had seen marked, Dan Justice and Harve Charles walked around the upper end of the house, called to me after they had gone up there and I went to them. Dan told me—no, Harve told me, I believe it was, that Dan could send his boy Fred, who was just then on the outside of the fence and who had been out hunting, after Miles Lester; and I spoke to the boy myself and told him to go on and get Miles Lester to come over there and meet us, and I would pay him for his trip over there. The boy went, and I did so. That is the first time that Harve Charles and Dan Justice went away from us to have any talk out of our hearing at all, unless they did when they went away from there with Mr. Campbell and Mr. *Gangol* to look at the stumps. I am absolutely positive that they had no private conversation from the time we first came there until

page 554.] Justice had told us the he knew where the corners were and what they were and had pointed them out, and had gone up there with Campbell, *Gangol* and Charles to the stumps. And I am positive that their going aside took place while we were considering the question of how we would get to all of these men and how we would send for them to come in there, and the only thing that occurred while they were at the fence at the upper end of the house, so far is I know, was the talk about send-

ing the boy Fred Justice after Miles Lester. The idea that Dan Justice was manufacturing evidence of a fictitious corner at that place never occurred to me, and I cannot entertain the thought for a moment. The information from him come to us in such a voluntary way and under such circumstances as to convince me that these people had seen those corner trees and had actually cut them down; and I can say now, looking backward over the whole transaction, that I still believe it. I never heard of Dan Justice changing his statement or his opinion as to those corners until after he came back from his trip to Charleston. We then sent Mr. *Gaugot* with Capt. G. S. Stone on to Knox Creek. They took a surveyor's tent and outfit, and at the direction of Mr. Campbell ran a line from the supposed location of the four white oak corner through to the stumps at Dan Justice's, and from there to the mouth of Gilbert's Creek, and also with the meanders of Race Fork and Knox Creek, up to the mouth of Johns Branch, and ran out the small surveys lying in the neighborhood of the stumps shown us by Justice. Mr. Campbell and I went to Grundy to make an investigation of the records to see if there was any other survey in that locality of which these stumps or tree of those stumps might have been a corner. We got copies of such surveys as were located there, which have been filed the Commissioner, and had the surveyor run the lines to see if these stumps were corners of any of them, and it developed that they were not.

page 555.] This surveying was done in the fall of 1901. In April, I think on the 22nd or 21st, Commissioner Graham had fixed this case for the taking of testimony at this place. I was coming down on the Norfolk & Western road on the 20th and after getting some distance below Williamson walked over in the second class coach, and was surprised to find Dan Justice in there. I shook hands with him and asked him where he was going. He told me that he was going to Catlettsburg, and from Catlettsburg about seven miles up the Sandy River in search of a daughter of his dead sister, that the girl had run away from home and he was going after her. I noticed some one lying down in the seat in front of him, with his hat over his face, and I asked Dan who

it was in the seat in front of him and he said it was Wadkins Blankenship, that Wadkins was going with him to help him find the girl. Well I thought that story a probable one—at least I had no suspicion at that time that it was not true. We came on to Kenova, I got off at the rear end of the coach, Mr. Justice and Mr. Blankenship got off at the front end, or rather, at the rear end of the second class coach, and they went down the stairs at the depot in front of me. When they got about half way down the flight of stairs below that middle platform I saw Mr. C. L. Dickinson with them and noticed that he spoke to them and turned around and went back with them and they all went into the depot, while I was yet at the top of the stairs. I started down the stairs, saw Blankenship and Justice come out of the depot with Mr. Dickinson close at their heels talking to them, but I thought he discovered me coming down the stairs and quickly reversed his movements, going back into the depot. Justice and Blankenship went down to the street car line, and while there told me that they were waiting for the car to Catlettsburg. The car for Huntington came along before the car to Catlettsburg and I got
page 556.] on it and started for Huntington. I took a position at the read end of the car to observe the movements of Blankenship and Justice and as the car pulled on toward Huntington I saw those two men turn and walk down the street car line toward the Glenwood Inn. I came on to Huntington, found Mr. Lyon and Mr. Campbell here, told them what I had seen and what my belief was about the matter. We then adopted such plan as we thought would enable us to find out what had happened. We had an investigation made, and found that Mr. Dickinson—well, I found that Mr. Dickinson had met Mr. Blankenship and Mr. Justice at the Glenwood Inn after I came from there and had a talk with them and that they had gone out, Blankenship and Justice going one way and Mr. Dickinson the other way. Upon further investigation we learned that they had gone to Charleston, and it was found from the register of St. Albert Hotel that Mr. Dickinson—that the men, had been registered, seemingly in the hand writing of Mr. Dickinson, as men just from Ironton, Ohio, and

J. N. Wadkins from Ironton, Ohio. Our information was that they were assigned to one room and Mr. Dickinson in an adjoining room. We had them traced up and found that they were in Judge Stiles' office at Charleston for some time. Mr. Campbell and I went on Monday or Tuesday—on Tuesday—to Knox Creek, getting off the Norfolk & Western Railroad at Devon. We went up Knox Creek on the same number of train that Dan Justice did. While at Devon and after leaving there I was informed that Dan Justice had been drunk in Devon the night before and had a roll of money showing it, and that Wadkins Blankenship said that Dan had gotten a hundred dollars and that the fool was now drunk and would lose it before he got home, that he saw him get it. The log train was made up of four or five trucks. Dan was seated up near the front of the train, while Campbell and I were further back. Afterwards he came back to our end of the train to speak to some one and I thought did not discover us until after he got back there. He bore evidences of drinking a good deal. Justice had promised me as he came down on the Norfolk & Western road to go back the next day or the day after and join G. S. Stone, who was then taking N. L. Reynolds over the lines that Stone and Mathews had previously run and to go along with those men in re-tracing those lines so as to carry such tools and luggage along as they might want, as he had previously done for surveyors in that work. I requested him to do so as we went up on the log train, but he complained that his hip was hurting him a great real and that he feared he would not be able to go. Campbell and I got off the log train at the mouth of Pawpaw Fork, near the saloon of Harve Charles. Dan Justice got off there and went through the saloon into a back room, and we were told he laid down on the bed in there. We went up to Harve Charles' house and after being there a little while some one of the men came in and told us that Harve Charles had been out working the road but that he had stopped down to the saloon and was talking to Dan Justice. He remained down there until a while after dark and then came to the house. Mr. Campbell and I were sitting on the porch—Mr.

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Pleasants was there, I think, working at his walnut timber—and Harve Charles said to us that Dan Justice said to tell us that he was not going to make any affidavit and we need not ask him to. That *struk* me as a little strange, for I had not heard of such a thing, and I said: "Why, Mr. Charles, I do not know what Mr. Justice means; nobody has asked him to make an affidavit", and Charles said "That is just what he said to tell you and I promised him I would and I thought I would do it". There is a telephone in Mr. Charles' house, it being along the telephone line over from Ritter's lumber camp, above Charles', extending down the creek to Devon. Some one called Pawpaw on the telephone, which had not been working that day until just before that time, and Mr. Harve Charles went to the telephone and talked to some one, saying, among other things, "Well I will come down tonight"; and Mrs. Charles told us the next morning that Harve went to Devon that night. He was there in the house when we went to bed and was gone when we got up. A young man who came up on the log train had told us and Mr. Dickson that day at Devon, while the telephone was not working, that he would give him five dollars if he would take a letter up to Harve Charles for him and keep his mouth shut. Mr. Campbell and I the next morning went to Hurley and inquired where Mr. Stone and Mr. Reynolds were. We heard of their going through the Lester fork country the day before and supposed that they would cross Knox Creek on the line from the three poplars and sugar tree to the mouth of Gilbert. We went down below Guest Fork and waited where the line crosses until Mr. Reynolds and Mr. Stone came. Levi Lester was along with them carrying the axe and possibly some other tools. I called Mr. Lester down and told him that I did not know him very well, that I did not know Dan Justice or anybody else in that country very well, but in my judgment Mr. King's people had bought Dan Justice up and that we wanted the good citizens in that country to distinctly understand that that was what we had to say about it and if Mr. Justice felt like he wanted to deny that he was at liberty to come forward

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and do so in such way as he liked. Mr. Reynolds and Mr. Stone had already told us that Dan Justice came into the
[page 559.] house the night before where they stayed all night, and that morning he told them that there never was any marks on the trees that were cut from the poplar stumps up there except what he put on them himself. From there Mr. Campbell and I came home. The affidavit of Dan Justice given by him at Charleston, filed herein and marked "Daniel Justice No. 1", seems to have been drawn with a desire to charge me if possible, in some connection, with manufacturing evidence to establish a fictitious corner near Dan Justice's house, and so far as that affidavit or the evidence of any one tends to do that, it is absolutely false. The statement in Justice's affidavit that I went to his house with Harve Charles the day before Campbell, *Gaugot*, Charles and I went there is a deliberate falsehood, for Dan Justice never saw my face, that I know of, and I never saw him until the day that *Gaugot*, Campbell, Charles and I saw him at his gate and on the occasion when he told us of the two poplars and sugar tree and showed us how they were marked. I omitted in my evidence above to state that after the shower was over and the weeds were dried off I went with the other men there up to the stumps, and while there I suggested that we might be able to find a piece of the log in the hollow bearing marks and went down to the butt log that there has been so much talk about in this case. Dan Justice said, "No, you will not find any logs down there because I burned h—ll out of the butts of these trees cut from the stumps here," and I says "Mr. Justice, here seems to be a butt log." He says, "Yes, that is a butt log, but it is one that I slipped from up on the hill here off of the Harmon land. Bill Bevins was claiming some interest in the Harmon land and come up here and got me to cut a lot of poplar saw logs. I did cut them and slipped some of them
down here and he never paid me for it and I burned
[page 560.] the most of them up, and this one is one that was slipped from up on the hill"; and he called my attention to the fact that that log had been trimmed around the

little end as saw-loggers trim logs for slipping off of the hill. *Rece* Davis in his affidavit talks about a conversation that took place up there at the stumps between Justice, me and others, which is wholly false. I had no conversation with Dan Justice about marks in the bark of the trees. Well, just in brief, that part of *Rece* Davis' affidavit is a falsehood, and he knew it. Dan Justice never told me or any one in my presence or elsewhere that the marks in those trees were in the bark and I never made any such suggestion to him as *Rece* Davis claimed I did, nor anything tending toward such a suggestion. *Rece* Davis was there at those stumps on the day after Dan Justice showed them to us and came up there for the purpose of identifying the stumps, or the one of them that he told us he had seen standing there marked. He made the statement to us that I read to him while he was giving his deposition. I read it over to him carefully after I wrote it down and I never heard of him chaaging his story until after Wadkins Blanken-ship had gotten hold of him and brought him out to see the representatives of Mr. King. Dan Justices' affidavit charges me with having laid down a map of the King survey and telling him that the corner that I wanted to find was three poplars and a sugar tree, and that "if there could be established anything of the corner that belongs to the King and Wilder survey that would lead them back to such a degree of Gilbert Creek that there would be no land inside worth fighting for." After Dan Justice took Campbell, *Gaugot* and Charles up to the stumps and came back to the house, Dan Justice was talking about the smaller surveys there, in answer to questions that we were asking him about,

page 561.] whether there were any small surveys that these trees might have been corners to, and in that connection, and after he had come back the first time from the stumps I took out of my saddlebags a copy of the survey of the 500,000 acre tract, with the plat attached, and I remember distinctly Dan telling me how the land run from the two birches, white oak and hickory to the triple lynns and asking me how the King tract called through that section, and it was in response

to that question that I read to him the calls of the line from the four white oaks to the three poplars and sugar tree, and from the three poplars and sugar tree to the three sugar trees below the mouth of Gilbert's Creek. I did not exhibit to him the map nor read the calls of that survey to him until after he had told us where the corners were and what they were and until after he came back from the first trip to the stumps. I did tell Dan Justice and everybody else then present that if we established that corner there would not, in my judgment, be enough land on the inside to justify Mr. King to continue the fight he had been making for the land —that is, enough that he could recover. Dan Justice's statement in the affidavit "that I wanted to know if he could not find something of that kind" (meaning the corner), is another falsehood. And his statement that he first told me that he could not find anything of a corner there and that he knew nothing of any corner thereabouts, is another deliberate falsehood; and his statement that I repeatedly explained to him that if such a corner could be established that it would cut King off to such a fine point that there would be nothing left of the land for King to fight over, is another falsehood. His further statement, that after listening to my conversation he went aside from me and talked with H. and C. Charles and then afterwards came and told me that there were old marked trees that were cut down, is another false way of *of* stating what occurred. For no such thing happened at all. His statement in his affidavit that Campbell, *Gaugal* and I, when we went there with *Rece* Davis, wanted to know if he (Justice) could get some one to say that the stumps were corners and that he told us that he could get some men to say so, is not true. *Simmeon* Justice did give us a statement and I wrote it down, but afterwards found out that he was not a creditable person, and with that information we decided we would not use him. The other persons who met us at the stumps gave us statements, which I wrote down in my book at the time, and they have all come upon the witness stand and testified to the facts, except Dan Justice and *Simmeon*, whom we did not call, and Morg Justice, and Wayne, I believe, went back on his state-

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ment. We went to the house of Levi Lester and took the statement of John Harrison Lester, who was then confined to his room and at the time I thought would never be able to give his deposition. He was suffering from what I thought was an abscess of the lung.

Q. In *Reece* Davis' affidavit I find this statement: "That the first time said Daniel Justice spoke of the marks on said trees he spoke only of marks in the bark and said nothing of any marks in the wood and on talking with Campbell and Sheppard he claimed to have *see* marks, as if of a hatchet, some six or eight inches deep in the wood. What do you know about that statement?

A. I know that it is a falsehood in every particular, and *Reece* Davis knows it too.

CROSS EXAMINATION

by Judge Stiles.

Q. What was the opposition that Mr. Vinson as counsel for John R. Reed, Trustee, encountered in getting the citizens in the cases that you have mentioned in your direct examination?

A. I had brought a suit, the style of which was, [page 563.] State of West Virginia against John R. Reed, Trustee, and others and it was my understanding of the West Virginia law providing for that kind of suit—I had not made as defendants therein any of the junior claimants, persons holding under junior grants and school lands—Mr. Vinson came into the court and made an effort to have the State bring those persons in as defendants in the case and encountered objection from such persons, such lawyers as represented the junior claimants. I remember distinctly that Judge Ferguson was one of the lawyers and I think too the only one that appeared in court in opposition to it. He is the one that I remember now.

Q. If you, representing the State, had seen proper to amend your bill and make these junior claimants parties, the opposition that Mr. Vinson encountered would have been removed, would it not?

A. I don't just understand what you are driving at, but I can say this, that Mr. Vinson would have encountered the same oppo-

sition from Judge Ferguson, but so far as I was concerned in that case I did not then, nor do I now, understand that it was the duty of the State to bring in as defendants the persons holding under junior grants or purchasers at school land sales. There was no showing in that case that any one claimed any part of the land that was sought to be sold.

Q. You are aware that there were such claimants, both of junior grants and lands sold by Commissioner of School Lands within the tract involved within that suit, were you not?

A. I was aware that there were junior claimants inside of the McCleary 100,000 acre survey, but my suit was not for the purpose of selling any part of the survey except the portions,

page 564.] the title to which remained in the State, not redeemed, released, transferred or otherwise disposed of. That is the constitutional language underlying the legislative machinery for the sale of school lands and I undertook to follow that in that case, so that—well to explain further, the bill, as I remember, simply set forth certain vacant portions of the McCleary tract that had been reported as vacant by the surveyor and alleged that there were other vacant portions. I did not then believe, nor do I now believe, that it was right for the State to bring those people in as defendants after the State had granted them or sold them at Commissioner of School Land sales parts of those lands.

Q. You did not believe that a claimant of the right to redeem one of those large tracts like the 500,000 acres had any right or that the State had any right to bring in the adverse claimants under junior titles, in order that therein the question of whether the land,-the title to the land, was vested in them or in the State or in the claimant, might be heard and determined?

A. As the representative of the State I did not believe that it was my duty to seek to resell for the benefit of the school fund any land that had been disposed of by the State. I thought it would have been bad faith for the State of West Virginia to sell a man a piece of land and then turn around and sue him about the same land. But I recognized the right of a claimant of any of those surveys to recover the greatest amount of it he can, by legitimate

and honest means, and to take such steps in court as would seem right and proper for him to reach such recovery.

Q. You were opposed to the bringing in of any of the junior claimants in the case of the State against LeMoyne while the same was pending in Logan County, or at any other time, were you not, and did you not resist all applications, either that the State amend its bill to bring them in or that they be brought in in any other way?

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A. As counsel for the State in the school land case mentioned, I was opposed to bringing the junior claimants into the case as defendants, and I did oppose it when the matter was brought up in court. I did not regard it as my duty to bring them in, or I would have done so when I brought the suit. There was no showing in the case that any person except the persons made defendants had any interest in the portions of the tract of land sought to be sold. I did not at all times, however, oppose the bringing in of the junior claimants into any case, for after the case of the State against King was removed from the Circuit Court of Wyoming County to the Circuit Court of Logan County, I began to consider the effect that the filing of King's answer in that case would have on the future proceedings in the case. I saw that Mr. King's answer in one gave the names of the junior claimants, but that the number of acres with reference to the locality and the book and page of the deed-book where every deed was recorded, and upon examining authorities I found a case which had been decided only a short time before that, the style of which I do not recall, but as I recollect, Judge McWhorter delivered the opinion, holding that where it appeared that persons not parties to a suit were necessary defendants that it was error to proceed without bringing them in, no matter how. That fact was brought to the attention of the court, and for that, and perhaps other reasons, I favored the bringing in of the junior claimants, by the fifth amended bill filed in this case.

Q. Was there not filed in the case of State against LeMoyne after it was removed to Kanawha County, or about the time it was removed, an answer on the

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part of King, the same in substance as the one filed in the present case in 1896, in which the same list of junior claimants was exhibited, with the number of acres claimed by each of them and the same reference to the book and page of the record, with the request that they be made parties to that suit, and did you not at that time, at or about the time of the reference to Middleton was made, resist the application to have them made parties, you being then counsel of record for the State of West Virginia?

A. Yes; you filed an answer setting forth that list of persons, I believe, just about as it is in the Wyoming case, and you did ask to have them made defendants and Judge Ferguson, who was then present, before Judge Guthrie, bitterly opposed the making of those people defendants, and I must say, I was also opposed to it, with the same view I had theretofore entertained. When you filed your answer I entered general replication to the answer and I remember distinctly that Judge Guthrie afterwards when passing upon your motion to have the State amend the bill and bring in the persons named in your answer, held that question open for future determination, saying that you alleged in your answer that those persons were necessary parties, that that answer was replied to and that he would wait and see some evidence of the necessity of making those people parties. I repeat, however, for your benefit that I was opposed to bringing those people in as defendants.

Q. Mr. King obtained the right to redeem the lands that were claimed adversely by the persons mentioned in the answer and Mr. Ferguson and yourself were opposed to his redeeming his title to those lands: was that the situation?

page 567.] A. At that time my object was to get to sell for the benefit of the school fund as many of the vacant pieces of the land as I could. I had no interest in any of the junior claims and was not counsel for any of the junior claimants. I thought that the rights as between Mr. King and the junior claimants should be fought out in a proceeding between them and without prolonging the litigation brought by the State to dispose of such portions as she had not theretofore disposed of.

Q. You were opposed to Mr. King's redeeming the land

claimed by the so called citizens or any of the so called "vacant lands", whether they were parties to the suit or not, were you not?

A. I did not believe that it was my duty to make those people defendants, and I must say that I did not think it was right that Mr. King should redeem the lands of the junior claimants. And while I took no special interest at that time between King and the junior claimants, I suppose you are correct in your theory that I was, in fact, opposed to his redeeming the junior claims.

Q. You were opposed to his paying the taxes on land that he claimed adversely to the persons holding or claiming junior patents and sales by the Commissioner of School Lands and taking a decree of redemption and thereafter testing the relative merit of his title against others in independent proceedings, were you?

A. Yes, because I believed that the forfeiture laws of West Virginia—section three of article thirteen, I believe it is—as well as the statutory machinery, provide for the forfeiture of titles such as King's and the successful and complete transfer of King's title to such portions of the tract as were held by others adversely under the junior claimants in any of the ways provided by our constitution or under sales by the Commissioner of School Lands,

page 568.] which in my judgment have the effect of grants from the State. I believed then that those people were protected, at least under the last clause in that part of the constitution I referred to. I believe that they are protected, and I can say that that position has been upheld by our Supreme Court in the case of State against Collins.

Q. You did not mean that Mr. King should have a chance of testing that question in the case of State against LeMoyne against such claimants by their being made parties, or a chance to test it elsewhere by first redeeming and then prosecuting suits against them, did you?

A. I was not specially interested in that question at that time, but I believed that Mr. King had lost his title to such portions of his tract as were held by those junior claimants and that he had no more interest in those pieces than sundry others had. In other words, I believed then, as I do now, in the complete and effectual

work of the West Virginia forfeiture laws and under them a *sundry* claimant who loses his title to any part of his tract thereafter has no interest in that part than if he had never had a grant to it.

Q. And representing the State of West Virginia, you did not intend King should have any opportunity to test the correctness of your view, either in that suit or in any other by virtue of redemption in that suit, of the lands claimed adversely to them?

A. I think I can say with safety that the thing that controlled my action in that case, in that respect, in addition to my legal reasons given, was the fact that I knew that if all those defendants were brought into that case the questions would be in litigation for a great number of years and that I would never be able to reach a sale of any portions of the lands, and I was anxious
page 569. | to proceed by the shortest route to a sale of some of those lands. It was at that time the most of the practice I had and I was working for the fees that I could get, and could only get them when a sale would be reached.

Q. Did you not know that Mr. King was not only willing but anxious and claimed the right to prevent the sale of any portion of the land claimed by him by payment of the taxes and charges thereon in redemption of the same and that the State had no right to sell such land under those conditions?

A. I recognized the right of any former owner to redeem under our statute, and I distinctly remember that Mr. King, through Mr. Shumate, his attorney, as well as yourself, frequently came into court at Logan and did a great deal of talking off of the record; perhaps said on several occasions that you wanted to redeem, but I was never able to get you on paper until after the case, as I recollect, had been dismissed by me and I never received any suggestion or proposition from you people in court or otherwise to redeem any of the pieces of land that I had set out in the case as being proceeded against. Your whole object seemed to be to get the case in such shape as to redeem the whole tract.

Q. Did we not file answers and petitions to redeem in *every* case in which any of the land claimed by Mr. King was affected?

A. Yes, you filed answers and petitions denying the validity of the forfeiture laws and the right of the State to proceed to sell and presenting that as the principal question to be litigated. Finally, I think, it was in such answer that if the court should hold against you on that that you wanted to redeem, but your principal position was, that we had no right to sell at all and that our forfeiture law under which I was proceeding in

page 570.] that case was violative of the Fourteenth Amendment of the Federal Constitution.

Q. Every answer and petition, however, contained the offer to pay the taxes, did it not?

A. Yes, I believe it did, but I always regarded it as a secondary matter in the case. If you had come into court and asked to redeem the vacant pieces that I was proceeding to sell, I would have made no objection at all.

Q. It was the redemption of the other land that Mr. King claimed about which you, representing the State, made objection, was it?

A. My principal objection was to the great delay that would be brought about by litigating the questions that you presented.

Q. Those were questions of law that could be argued and disposed of by the court in the December term, were they not?

A. So far as the questions of law were concerned, they could, but they were questions of fact that could not have been determined in several years. You seemed unwilling to redeem any part of the survey until your rights to the whole were finally determined.

Q. We seemed unwilling to redeem the unclaimed land east of Gilbert Creek and depart content with that, which was the condition upon which you and Mr. Buskirk, Commissioner of School Lands, said we might redeem, did we not?

A. I was never present when you had any conversation with Mr. Buskirk about it. So far as I was concerned, I did not believe that you had any right to redeem any lands west of the Gilbert's Creek line.

Q. You thought that was a question for you, representing the State of West Virginia, to determine and not for the court?

A. I thought it was my duty as a representative
page 571.] of the State to see that claimants of the vacant land west of Gilbert's Creek paid taxes from the formation of the State to the date of redemption; whereas you would have paid taxes only from 1883 to the date of redemption. I thought that was to the interest of the State, and believing as I did that your survey did not come west of Gilbert's Creek line, I thought I was right. That question might have been determined by the court, of course.

Q. Would not a proper attitude for the State have been to let that question of the amount and length of time for which taxes should be computed be determined by the court, rather than by the State, in advance of any action of the court?

A. I do not know that I would be a fair judge to pass upon my own action or views, but I was acting then in the capacity exclusively for the State and doing what I then thought was right. Some one else, of course, might have thought it was wrong.

Q. After the present case had been remanded from the court of Appeals and Mr. King permitted to file an amended petition, designating specifically such land as he agreed to pay the taxes upon and redeem the same, and it was apparent that he proposed to avail himself of that right and then objected to the intervention of the persons whom previously he had waated made parties, your view of the propriety of having the State make such persons parties changed, and you in common with others advocated the filing of the fifth amended bill in the present case, did you not?

A. I was willing that the fifth amended bill be filed. I was viewing the question at that time from the standpoint of junior claimants, whom I then represented, and considering the history
of the case as it had proceeded, I believed that it
page 572.] was then the best thing for the junior claimants to have them made defendants and come into the case and fight it out with you. Believing that, I was perfectly willing that the fifth amended bill be filed.

Q. And in an argument with the court at that time in behalf of the persons you represented, you advocated that that course be taken, did you?

A. I took the position before the court that you having made it appear in the case, by your petition, that the junior claimants therein named were interested in the land sought to be sold, and inasmuch as Mr. Childers, the attorney for the State in Wyoming County, was proceeding to sell not simply the vacant portions but the whole of the King tract and had described it by the Sell survey, and in view of the case decided by the Supreme Court, as I mentioned a while ago, that it was proper to make them defendants, and I told the court then that I thought it would be error to proceed with the case without bringing those people in, it having been brought to the attention of the court in that way that they were necessary parties.

Q. Notwithstanding the protest by Mr. King's counsel and the fact that the Supreme Court, although its attention had been called to it, had not directed them to be made parties or the State to amend its bill, but merely that King amend his petition and define the land upon which he paid taxes?

A. There were a number of questions arose in the case in the Supreme Court not passed upon at all by that court, and I did not believe that the protest of Mr. King could get rid of the fact which appeared of record in the case, that these people were necessary parties.

page 573.] Q. Who drew the bill in the case of State against LeMoyne?

A. I have no distinct recollection of drawing it, but I drew all those bills.

Q. Was that not the work in whole or in part of Judge Ferguson?

A. No sir.

Q. The most of the lands sold by the Commissioner of School Lands within the Morris grant, as claimed by Mr. King, had been sold within the five years following the redemption in 1883 and

before there could be any forfeiture of the land or the right on the part of the State to sell it, had there not.

A. I am unable to say whether there had or not. I know in a general way that School Land sales had been strung out from Judge Ward's time on through the eight years that Judge McGinnis was judge and after Judge Harvey came on the bench, but I could not say as to your question.

Q. Do you not remember that the School Land tracts, particularly on Rum Creek, had been sold by Chambers, Commissioner of School Lands, to himself and his wife and his son, along in '86 and '87 and thereabouts?

A. I could not say definitely as to the dates when the bulk of that land was sold, but my impression is that you are correct, at least as to a part of it. I think, perhaps, there was some of it sold —or I have it in mind, that there was a good deal of it sold or deeded, perhaps deeded, in '88. I am not certain about that: that may not be correct.

Q. It was generally conceded by the Bar, was it not, that such sales made in ex parte proceedings, from 1883 on through 1888 were invalid, was it not?

page 574.] A. There were different views entertained by lawyers. I understood that that question was considered before I had anything to do with the school land business and at the beginning of Judge McGinnis' term, and was passed upon by a majority of the Bar and the Judge, and that they had decided that such sales would pass title. Speaking for myself, I always felt that those sales were not regular, but at the same time I believed that they bound the hands of the State.

Q. Even though the land did not belong to the State at the time of the sales and was not forfeited? Did any one regard them as valid?

A. I don't know that I heard that question discussed at all among the Bar. Those are questions that have arisen since this litigation and I suppose I would hardly be a fair judge to pass on my own case.

Q. Was it not well known to be the position of Mr. King's counsel that all such sales were utterly invalid and that he proposed to test that question in the case of State against LeMoyne with the adverse claimants, if he could get them in, and without them if he could not?

A. Yes, that was my understanding of what he proposed to do.

Q. He made that intention plain from the very first, did he not?

A. Not in my first experience with you and Col. Wilder, but it appeared afterwards that that was your intention. For sometime after you all commenced appearing in court, you stated that you were not going to interfere with any junior patents, but you did say that the School Land sales were invalid and that you were going to test the titles to them.

[page 575.] Q. And you dismissed that suit in the January, 1893, term, did you not?

A. No, sir, that is not my recollection of it.

Q. Well, January, 1894, term?

A. Yes, sir.

Q. How long did you continue to act as counsel for the State in the case of State against LeMoyne and other cases that were originally instituted at Logan?

A. I only acted as attorney for the Commissioner of School Lands until Judge Doolittle was elected in 1896. When he came on the bench he appointed a different set of officers.

Q. At what time in 1896?

A. Well, he came into office in January, '97.

Q. Were you not representing the State of West Virginia in the summer of '97 in those cases at the time we were taking depositions at Williamson and Welch and elsewhere?

A. The order appointing Hinchman Commissioner of School Lands and J. S. Marcum and J. S. Miller his attorneys stated that those gentlemen might, if they desired, retain me or request my assistance in those cases. I have forgotten just the language, and I now recall that I did participate in the taking of depositions in those cases along in '97, but I had no other connection with any of the School Land business.

By agreement of counsel the taking of depositions herein is adjourned until 7:30 P. M., at the same place.

page 576.] CROSS EX. J. A. S.

Q. Captain Matthews and Mr. Reynolds testified in this case that their fees as expert witnesses in the case of State vs. LeMoyne and others for their depositions given at Williamson in 1897 were paid by you, who if any one furnished the money for paying their witness fees and fees of other witnesses examined on behalf of the State?

A. My recollection is that the money was furnished me by Judge Duke, George Ashbridge and perhaps others who advanced the money and took the fees bills; the State and her representatives had no money with which to pay the expenses of the suit and I was unable to proceed with it in the absence of an arrangement with some one to advance the costs.

Q. Were the *fees* and expenses that were advanced to the Commissioner paid out the same fund?

A. Yes.

Q. All the testimony taken in that case in the name of the State was in an effort to establish the boundaries according to what is known as the Gilbert Creek theory was it not?

A. That is my recollection, except such as was taken by you.

Q. That which was taken by me was in support of the location contended for by King in the *present* case was it?

A. It was.

Q. Who was George Ashbridge?

A. He was agent for Stuart Wood.

Q. And who was Judge Duke and what was his relation to the land in question?

A. He bore some relation to Egbert Mills and others trustees.

Q. Some of those trustees now claim title under Judge Duke, do they not?

A. I am not aware of any land at this time that he has *conveyed* to them. If such is a fact their answer will show it.

Q. He was for a long time from 1893 and before that time down to within a year or so the general counsel of the

page 577.] trustees Egbert Mills and others, and the counsel of Mr. Kountz, was he not?

A. I understood that Judge Duke was counsel for these trustees in *some* way, but as to knowing anything about his connection with Mr. Kountz, I never knew what it was.

Q. The lands standing in the name of Mills Trustees and others are commonly and familiarly known through Logan and Mingo Counties as the Kountz lands are they not and Judge Duke was commonly known and referred to as the counsel for Kountz Brothers or for Mr. Kountz, was he not?

A. Those lands are most commonly referred to throughout the counties you mentioned as the Ganjot lands, to some they are known as the Kountz lands. I heard Judge Duke say on one occasion when Mr. Shumate had referred to the lands in a deposition given by him as the lands of Kountz Brothers, that Kountz Brothers had nothing whatever to do with these lands.

Counsel for the contesting defendants move to strike out the evidence of the witness relating to the question of the *pryaca* of costs and witnesses fees by Ashbridge and Duke as irrelevant in this case.

Q. Kountz Brothers is a corporation is it not?

A. I dont know.

Q. You say your reason for dismissing the suit of the State vs. LeMoyne, was that it was defective in the order of publication, was it necessary to dismiss the suit in order to correct that order?

A. No. The better practice would have been to have remanded the case to rules.

Q. Was there any new bill or amended bill filed after the reinstatement of the case or before?

A. I dont think there was. The defect in the order of *publicatin* by the appearance of Mr. King, was cured after the case was reinstated.

Q. The case was as defective when reinstated as when dismissed?

page 578-588.] A. Certainly it was.

Q. You did not give any notice to Mr. King's counsel of the proposed reinstatement of the case until after you became aware of the pendency of this suit in Wyoming, did you?

A. I think not.

Q. You say that Colonel Wilder when he first mentioned the matter of redemption declared that he did not want to take any bodies home away from him, or something to that effect, is not the exclusion of five or six hundred or more of the junior patents from Mr. Kings amended petition in the present case in harmony with that declaration?

A. That fact taken alone would be but when you consider the fact that only such as you had no show of recovering has been disclaimed and also the many others that you do claim simply means to me that you are exercising your right to fight for whatever you think you have a show to recover.

Q. Is it not a fact that upon the lands embraced in King's amended petition in Logan and Mingo Counties there are no houses or homes of the citizens that are claimed by the citizens as their own?

A. That is not my understanding of the situation. I do know however that in a great many instances the citizens have been selling their lands since the construction of the Norfolk & Western Rail Road brought *developement* into the country. On the other hand I know I represent some people in this case who live on their homes.

Q. It is a fact however, that all but a very small portion of the land embraced in that petition is either wild land or land claimed by the corporations and syndicates upon which such persons as are there residents are tenants and not owners

A. I am not prepared to say that the conditions exist just as the question puts them, you seem to have disclaimed for Mr. King a number of the junior patents on which the citizens lived but not their adjoining tracts. I think the names given

page 589.] in the summons in *the* this case, will disclose the fact that there are more residents than non residents sued, as claimants. Some of the lands have changed hands since this suit was brought and it may be that there is at this time as much or *possible* more of the lands claimed by Mr. King held by non residents than by settlers. Upon reflection I will *sat* that there are more lands held by residents than by non residents.

Q. What do you mean by residents? Persons living on the lands or persons living in the State?

A. Well I included both.

Q. You say that your interest in the case of the State against LeMoyne and the other cases brought by you was on account of the fees that might be derived therefrom or from a sale of the lands; if any request or proposition that Mr. King be permitted to redeem made by me to you contained any reference to or suggestions of your own interest was such suggestion anything more than that I should not haggle or contend over the counsel fees that might be allowed upon such redemption?

A. I *wouod* like to know that the impression made on me at the time was not a correct one but to be perfectly plain about it your reference to the manner in which the decree of redemption was obtained in *in* Wyoming the case of McClure against Maupertuis, and your statement to me that you would expect to reward Buskirk and me liberally as well as your manner made the impression on me that you had sized me up as a purchasable quantity and decided to go after me. I knew at that time and I think it was generally known among the bar that it was generally understood that the decree in the case last mentioned was procured by the payment of sum of money to the School Land Officers by private arrangement, which sum was never made known in court.

Q. Did I profess to know anything about the case of McClure against Maupertuis, other than appeared upon record?

page 590.] A. You did not but I knew at the time that Mr. Shumate had been connected with the redemption in that McClure and Maupertuis case.

Q. Mr. Shumate was not the counsel for Mr. Randall the *redemptione* was he, but was the counsel together with Judge Ferguson for the Pittsburg National Bank of Commerce which contested the right of Randall to redeem and took an appeal from the decree of *redemptio*

A. I did not mean to charge Mr. Shumate in this connection with the fraudulent procurement of that decree but knew that he was counsel in that case and it occurs to me that the decree of redemption is in his hand writing. I supposed that Mr. Shumate had heard like the rest of us how that decree was obtained. Yes I knew that Shumate was with Judge Ferguson in the case.

Q. What do you mean to imply *improperty procurred* the decree in question?

A. I have heard that some one representing Randall Trustee, *procurred* the entering of that decree in the way I have stated.

Q. Mr. W. E. Chilton was the counsel for Mr. Randall in that case was he not?

A. I think so.

Q. Mr. Chilton at the time of my first connection with the Morris grant or with King's interest in this country, was claiming a large body of land in opposition to Mr. King was he not? And was counsel against Mr. King in sundry cases in conjunction with yourself and never upon terms of confidence *of* intimacy with myself.

A. Mr. Chilton claimed about 9000 acres of land west of Turkey creek. He was present and help try the case of King against Mullins and McClintock both before Judge Jackson and Judge Goff. I do not know of any relation especially intimate between you and Mr. Chilton. I never supposed there were any but you seem to be on very good terms. I never had
page 591.] any reasons to believe that there was any confidential relations between Mr. Chilton and you.

Q. Mr. Buskirk the Commissioner of School *Lnads abot* the time in question or during his term of office cut a large quantity of timber *of* the land that Mr. King claimed and wished to redeem in the case of the State vs. LeMoyne, did he not?

A. Yes he cut the timber from the lands on Rum Creek which was made up of junior patents and lands or tracts sold as school land, which he had bought from M. B. Mullins.

Q. A large sum of money out of the proceeds of that timber he expended in the defense of the action of ejectment of King against Mullins and in ancillary suits did he?

A. He spent a good deal of money in that way but I think he spent that money before he realized on the timber.

Q. He borrowed a great deal of money on the timber did he not for the timbering operation and the defense of said suits?

A. He got in debt enough to fail by reason of the suits, timber *iperations* or something. I think however, his indebtedness was mostly in shape of open accounts to merchants.

Q. Your law partner J. B. Ellison had at the time mentioned some claim of title to the John Green 84,000 acres *dident* he?

A. Yes. But our partnership did not extend to the school land practice.

Q. But if King could be confined to Gilbert Creek Mr. Ellison and those interested with him would have had no opposition in their claims at least to the unsold portions of the 84,000 acre tract

A. They would have had no opposition from me as the representative of the State in redeeming the vacant portions but I treated them just like I did you in bringing the suit. I did not sue any of the junior claimants defendants in the Green suit and would have opposed such course if they had suggested it.

Q. Did Judge Duke attend Wyoming Court with
page 592.] you at any time during the pendency of this suit there and if so how often and what part did he take in the same?

A. Judge Duke came there once after I had been there for a day or so and as I recollect it got up in open court and asked to be informed as to the condition of the suit of the State against King and what was proposed to be done with it when an *enquiry* came from Colonel Childers and Mr. Shumate demanded to know who Judge Duke represented and what rights he had in the case. A sort of general storm ensued and Judge Duke came out into the

court yard and gave Mr. Shumate a pretty round abusing. I think that was about the amount of his participation in that case.

Q. Did he not insist to the court that the case ought to be dismissed for want of jurisdiction or some other ground?

A. If he did I am unable to recall it now. His row with Shumate was the thing that fixed itself on my mind more than any other part of it.

Q. What was the cause of his quarrel with Shumate?

A. Shumate had been connected with him as counsel and had abstracted and passed on some of the titles that had been brought by some of Judge Duke's clients and I got the impression that the Judge thought that Shumate was conspiring with you all to try to take those lands away from them.

Q. And he therefore tried to get the suit dismissed *dident* he?

A. I am unable to recall any effort at all on the part of Judge Duke to try to get the case dismissed. I dont mean to say that he did not but I simply have no recollection on the subject.

Q. Did he have any other business at that court than that case this case, rather?

A. None that I know of.

Q. He was in attendance at several different times was he not and each time exclusively on account of this case?

page 593.] A. I dont recollect whether Judge Duke was there again until after the entering of the decree of September 30th. 1897 I remember him being there after that.

Q. Do you remember that for several terms Mr. King was ready to file his answer in the case but at each term some objection was made by yourself or *attornies* associated with you which resulted in the cause being remanded to rules or the filing of an amended bill?

A. I dont remember how ready Mr. King was to answer but I do remember that I appeared there by permission of the court and as friend of the court from time to time and quashed the orders of publication and caused the case to be remanded to rules until the fourth amended bill was filed.

Q. Do you know who drew the petition of McClintock in that case?

A. Not positively, but my recollection of it is that Ellison drew it and it seems to me that C. H. Turley took it to Wyoming and filed it.

Q. Did Mr. Vinson so far as you know ever see the petition before it was filed?

A. I simply have no information or recollection on that subject.

Q. Did you know at the time the petition was filed that the estate of McClintock had been put in the hands of a receiver of the United States Court?

A. If the receiver had then been appointed I presume I did.

Q. The receiver was appointed in 1893?

A. I suppose then I knew the fact or had heard of it.

Q. Did you know that or consider that the appointment of the receiver divested McClintock of his title to or control over the land formerly claimed by him?

page 594.] A. I dont really remember how I did consider it or that I thought of it at all until later in the proceedings and perhaps about the time that you (Stiles) and I were taking depositions, I think that I made up my mind then that I would have to get permission of the Federal Court to intervene in that case in the name of the Receiver. I *cant* remember now that at the time the petition was presented I knew McClintock was in the hands of a receiver. Mr. Vinson had been McClintock's attorney for several years and was also his receiver and at was at Vinsons request I appeared for McClintock. I dont know whether he wanted me to do it in the name of McClintock or in his name as receiver. Finding the petition had been filed in McClintock's name I suppose I went on appearing in his name for that reason.

Q. You *dident* draw the petition nor file it did you?

A. I dont think I did.

Q. Suit of State against McClintock was brought in Logan County before this suit was brought in Wyoming *wasent* it?

A. Yes.

Q. Did you file any answer or petition for McClintock or Vinson receiver in that case?

A. I did not. I represented the State in that case and Vinson represented Mr. McClintock.

Q. Had McClintock filed any answer or petition in that case

A. I do not remember whether he had or not at that time.

But I want to say in *emplanation* of my position that McClintock was seeking in that case to redeem only the vacant pieces and there was no dispute between Mr. McClintock or Vinson his representative and me as attorney for the state as what part of the McCliatock tract was liable to sale or redemption. I am perfectly to say as the representative of the State I preferred that McClintock redeem those pieces rather than to let King redeem them except as to a very small V shaped piece of the King

page 595.] tract that runs into the Buffalo country. For this I had two reasons; first I did not regard the land except a small portion mentioned as being inside of the Morris grant; and second if King redeemed the State would get taxes from 1883 while if McClintock redeemed the State would get taxes from the formation of the State of West Virginia. And the pieces of land proceeded against were inside of the Dewit Clinton survey claimed by McClintock .

Q. The Dewit Clinton grant was forfeited to the State of Virginia and had become irredeemable in the early part of the last *centuary* had it not and no taxes had ever been paid on it under the Dewit Clinton title

A. I think that my investigation revealed the fact to my satisfaction that the tract had been forfeited to the State of Virginia, just when I do not recall.

Q. You thought it was proper that the claimant of that grant who never had paid any taxes, either he or his predecessors in claim should have the preference over Mr. King whose predecessors had *paif* the taxes on the Morris grant from half a century or thereabouts?

A. I did not consider that Mr. King's predecessors had paid taxes on any land outside of the lines of their grant and I satisfied my-

self in the beginning that the lines of the King grant did not extend west of a line from the mouth of Gilbert to Turkey Creek and the line from the sugar tree corner at Gilberts Creek running north ten east 4450 poles I did not regard the redemption of 1883 as covering or redeeming any land outside of the lines as located by the monuments called for in the grant. I also satisfied myself that *they* pieces of land I sought to sell in the McClintock suit were inside of the Dewit Clinton Survey and for reasons given did prefer that the taxes on those parts be paid by Mc-
page 596.] Clintock, rather than King

Q. You meant to constitute yourself and not the court the judge of the location and rights of the parties did you?

A. No I was only expressing to you my own preference in the matter but would *have* course have submitted to the decision of the court.

Q. You knew that King's predecessors prior to the redemption of 1883 had been charged with taxes and had paid the taxes for very many years on 500,000 acres of land did you not and that in 1874 or 5 Randall had redeemed in the *Audotors* office 300,000 acres situated in this state from prior tax sales made in this state at a cost of over $8000.00?

A. I dont remember whether I knew those facts or not but if I did I could not have given my consent to the payment of taxes enlarging boundary lines as plainly set out and as easily found as the western boundary lines of this Morris grant

Q. You were willing to give your consent to the repudiation by your client, the State, of more than 400,000 acres of her grant of $500,000 acres in order that McClintock and the predecessors of John Green might redeem the vacant portions of those tracts by paying taxes back to 1863 were you?

A. It was my desire to have the claimants of the several large surveys confined to the boundary lines of their own tract. I was not attempting to favor one against the other and as before stated I made a study of the surveys and their locations before I instituted the suits of the State against Lemoyne, The State against McClintock The State against Greens Heirs and the two cases against

the Taylor Surveys. At the time I brought the suit against LeMoyne I had never heard, I dont think, of Judge Stiles or Colonel Wilder. They had not come into the country at that time and I am *sure* I had never heard of it being contended by any one that the Morris Grant extended west of the location given to it by the contesting defendants in this case. The contention
page 597.] that that tract of land should be located by course and distance had never been presented to me by any one. I had seen the map prepared by the representatives of the Swann estate showing the location given to the tract by them just as it is by contesting defendants here. I had also talked to the surveyor who made the map, so that when Mr. King's contention that the tract should be located by course and distance thereby covering a large territory west of what I regarded as the true location was presented I thought it was wrong and as the representative of the State I opposed it as a wrong and I still believe it is wrong.

Q. And as the representative of the State you dismissed the suit in which Mr. King's claims might de demonstrated to be wrong, and did not reinstate it until you found suit had been brought some where else?

A. I dismissed that case for the reasons stated and with the intentions I have stated. I reinstated it for the reasons I have already stated.

Q. At the time McClintock's petition was filed in this case the case of State against McClintock had been removed by him into the United States Court, the same court in which a receiver of his affairs had previously been appointed had it not, and was there pending at that time?

A. The case was removed into the Federal Court dont remember the date.

Q. Did he after that removal or at any other time make any attempt or did his receiver in that case to redeem any portion of the land from that time to this that you know of

A. No, they have been litigating the question of boundary with you.

Q. Was it not well understood that McClintock had no purpose

of redeeming any land and is it not well known that there is no provision of law for the redemption of any land which was *forfeithed* to the State of Virginia and not redeemed prior to the formation of this State and that his only expectation or hope was for a sale at which he might become a purchaser at a small price?

page 598.]

A. Lands forfeited to the State of Virginia are not redeemable in the strict sense of redeeming but by the terms of the statute you refer to the former owner in such case is entitled to the excess of the purchase money which enables him to bid more than any other person for the land and to get his land by the payment of the taxes and costs which in substance amounts to a redemption I never knew of any idea on the part of McClintock or his representatives to get the land for less than the taxes.

Q. It might result that the land would sell for less than the taxes might it not?, and did not the land sold by the commissioner of School Lands of Logan County, on Rum Creek for instance, sell for about ten cents an acre?

A. Such a thing might happen and as I recollect it a good deal of the school land was sold for a very small price, perhaps as low as you mention, that however, was before I had anything to do with the business and I am sure the McClintock land would not have sold for less than the taxes. My rule was to never report a sale where the land failed to bring the taxes, interests and costs.

Q. When was J. R. Robertson appointed commissioner of School Lands?

A. I have nothing in mind with which to fix the exact date

Q. Was it not at the February 189? term of Wyoming Court?

A. It may have been I have personal knowledge on the subject.

Q. Was it not at the same time that an order was entered in this case on the motion of the State, referring this cause to D. A. Robertson, Commissioner and directing the cause to be *proceed* with?

page 599.]

A. The record here will show. I doat remember. I know this however, that I knew nothing of the ap-

pointment of D. A. Robertson as Commissioner in Chancery in this case until after the decree of reference.

Q. Is J. R. Robinson now living?

A. I understand he is not.

Q. At the time you refer to when Robertson came to Iaeger had I not some time that morning received a telegram while we were taking depositions?

A. You may have, but I fail to recall it now.

Q. From where Mr. Manns house, where we were taking depositions, stood was not the rear end of the train from Welch *reach* with *egual* facility by going one side of the depot or the other?

A. I think the distance to the front end of the train would be shorter, the first class coach would be at the upper end of the depot and further from the house.

Q. Was not the room in which Mr. *Rodertson* and I sat during *t* the time you were at dinner the common sitting room of the family on the first floor while the room I occupied personally was upstairs?

A. The room had a bed and a sofa in it and I understood at that time that it was kept for your accommodation. I know that the room was not open to the public while you and Robertson were in there. You were there alone and the door was closed.

Q. Were we there more than about the time that the other persons about the house were engaged at the table, some twenty minutes or so?

A. Yes, we all finished dinner, I came out and sat on the portico a while and walked up street, went up there to a place *w* where they sold liquor and over to the depot and went back down to the house and saw you and Robertson sitting next to the back window talking. I again sat down on the portico and after I had been there a while you and Robertson came out and went to

page 600.] dinner.

Q. When we adjourned that night did I not state and was it not an evident fact that there were no more *wirnesses* present and did I not say that I had been disappointed in some of them coming and that I *dident* know when we would be able to

get any more and that we would have to adjourn for that reason and that I had that day received a letter from Mr. Sell closing an appointment to do some surveying in *Richey* County within a few days following which would also necessitate an adjournment which arrangement was satisfactory to you?

A. Yes you took all the witnesses you had there and believe you said that you were disappointed about others not coming. I dont remember you saying that you had received a letter from Sell closing an arrangement for any surveying but you did say that you had to go to *Richey* County to do some surveying and expected to take Mr. Sell with you but I found out afterwards that you went to Wyoming Court House and sent to Logan Court House and had Sell go up there and give his deposition in this case, about all of which you failed to tell me a word.

Q. You learned that I did not go to *Richey* at that time because *mR.* Flornoy who was interested with me could not go and that we went later and had Mr. Sell do the surveying I presume?

A. All I know about that is I heard Mr. Sell say that he was up there some time but I dont remember when.

Q. Had the deposition that you wanted to be produced and be made a part of the record in this case been completed or in any way acted upon so as to make it properly returnable with any report of the Commissioner or had Commissioner J. R. Robertson made any report based upon it?

A. J. R. Robertson made no report based on Sells deposition but when I was there Sell's evidence had been *prtly* taken and the case was continued with Sell on the witness stand and when you put him back the second time the regular way would

page 601.] have been to resume his deposition right where we left off.

Q. When that incomplete deposition was produced in court upon your request it was brought by Robertson from his office was it not as soon as the court ruled that it was proper part of the record?

A. I dont know where he got it but he brought it in after a rule was awarded against him requiring him to do so.

Q. Is that rule in the record or any rule of that sort?

A. I don't know whether it is or not, I am speaking from memory and not from the record and I know I drew an order awarding a rule against him and requiring him to bring this part of the record in and that order was *endorsed* by the court to be entered, in the presence of Mr. Robertson and he then went out and brought in the record without further notice of the rule. That order may not have been entered of record.

Q. McClintock's petition was still in the record was it not at that time and would better disclose what controversies there were than would the deposition?

A. The petition was perhaps in the record but I dont think my name was to it as one of the attorneys and my name was to the agreement to continue the case which Robertson had received from me and my name was also on the deposition.

Q. Is not much the same matter to be found in Mr. King's answer filed in 1896 that you notice in the report and which you say you think suggested my language or style?

A. *Your* language and style of course is in the petition of King and I thought I recognized it in the report of D. A. Robertson.

A. At the time of making the stipulation that you have filed in this case and of the one which was filed in the supreme court of the United States submitted the Mullins case did

page 602.] not Mr. Vinson after the stipulation for submission had been reduced to form and agreed upon state that whatever stipulation you and I agreed upon with reference to the —this case, would be satisfactory to him and did he not then leave the room in the hotel while we were discussing the matter after which we put the stipulation for a continuance in the form in which it was finally signed?

A. I think he did and left town. I want to state further more, while answering that question it in some way caused me to remember the fact that of McClintock being in the hands of the receiver

about which I did not remember a while ago. I perhaps failed to remember it because of the fact we had used McClintock's name without reference to his receivership in the action of ejectment at Parkersburg and in the agreement to continue the case and in his petition.

Q. Was not the pendency of this case or rather the fact that a decree had been entered in it first brought to the attention of the Board of Public Works by you?

A. It was in the way I have stated.

Q. Did not the board first decline to take any action and failed to take action until Mr. Holt or Mr. Hubbard added their influence?

A. I never heard of it before. I know that Mr. Holt and Mr. Hubbard were not present when I presented the matter to the Board of Public Works nor when the Board directed General Rucker to appeal the case. If either of them were about there any where my memory is an absolute blank on it.

Q. Did you not participate in preparing the material or data for the fifth amanded bill in this case?

A. I had nothing whatever to do with the preparation of the material of that bill or the bill itself. I never saw *in* until Mr. Marcum came over to the room occupied by him, Mr. Campbell *an* me upstairs in the Buskirk hotel.

page 603.] Q. You saw the bill and examined it before the question of filing it was presented to the court did you?

A. Yes.

Q. Can you state what parties to the fifth amended bill you represent?

A. I could not do so now but if you or the commissioner would like to have it I can file a list. I will file such list showing the persons I represent.

Q. You say you were surprised when you met Dan Justus on the train the time that he came down to Charleston, and that your suspicions were aroused by seeing him and Mr. Dixon at the station

and that you took measures to find out what it meant, or something to that effect, what measures did you adopt?

A. *WHE* put people on the trail to try to find where he went to The first thing we did was to get the Chief of Police to go to Kenova and to Catlettsburg to see where Justus and Blankenship had gone. The next thing I believe that happened I went to Kenova the next morning and pulled up the night clerk in the hotel, I mean I got him out of bed and found or learned what I have detailed as occurred between Mr. Dixon and Mr. Blankenship and Justus, I also learned a fellow who kept the lunch counter in the depot that men filling the description of Blankenship and Justus got off No. 1 on the C. & O. and bought some lunch there and went up the N & W. on No 12. We also sent Harry Duncan a member of the firm of Campbell Holt & Duncan to Charleston to see what he could find out up there and he reported to us what I have stated as appearing on the register *on* the St. Albert Hotel.

Q. When the detectives brought Dan over to Williamson—Dan and Reece Davis a few days later did you act the part of interviewer on that occasion?

page 604.] A. I think I propounded some of the questions that were taken down by the stenographer.

Q. Who else was there with you at that time?

A. There was Dan Justus, Reece Davis, Old Mr. Gaujot, I think Claud, Mr. Campbell, T. L. Felts, William O'Brian the notary and Miss Ethel Cole my stenographer, and I believe Mr. Lyon was there

RE-DIRECT EXAMINATION.

By The Witness: I want to state that the allegation in Mr. King's answer that the money paid by Chambers by the Commissioner of School Lands of Logan County, was never paid into the State Treasury *in* not true, that money was fully accounted for as order by the court.

Q. State what you know about *survey* Reddy's examination of the alleged location of the sugar tree near the lynn stump back of

Justus house, the *extend* of his digging or scratching around there if any and the quantity if sugar roots found there?

A. I have read Mr. *Reddy's* evidence touching his examination of the location of the sugar tree wherein he speaks of finding a peck or more of roots which had been deposited there and I want to state positively and *emphaticaaly* that it is an inexcusable falsehood. I was looking right at Mr. Reddy and was almost touching him when he stooped down and picked up one small piece of decayed root and said that was sugar tree and cast it aside, picked up another piece of root and said that was sugar tree and cast it aside and picked up a third and pronounced it lynn. Mr. Reddy did not dig into the ground and he did not discover there any peck of roots or have *hi* his hands or see any more roots in that place than I have mentioned except perhaps some part of rotten *rotten* lynn stump. I am surprised that Mr. Reddy would lend his evidence in such form as he has and for such purpose as he apparently did. I was there when he did the surveying and was with or in sight of the party most of the time. I was at the mouth of the Hurricane Fork when the poplar corner tree was examined and

page 605.] I discovered Mr. Reddy's desire to try to find *that* that place trees that would answer to the poplars, the sugar tree and the beech line tree about which we had offered proof on a small branch at Dan Justus house. He tried to say that a beech standing on the bank of the branch had two marks on it and I think started to write it down that way on his memorandum. I was at the beech with one end of the tape while Mr. Reddy was at the poplar corner with the other end of the tape taking the distance between them I called him over to the beech showed him that it was not marked as a line tree at all and he admitted that it was not That poplar corner tree stands right at the foot of the hill on the edge of a level piece of ground and not up on the hill side. The only other marked trees we found there were two poplars marked as line trees between that poplar and I believe a beech corner called for in the Estep Survey. I noticed that when we got back down to Dan Justus house that Mr Reddy was testing

every theory and location of the lines of the small surveys there to see if he could run any of them to or through the poplars and sugar tree. I did not go with them to the gum and dogwood but saw them when they came into the branch at Dan Justus house running on the line from the beech and dogwood to the triple lyna and noticed that Mr. Reddy stopped when he got opposite the poplars and sugar tree without going on to the triple lyna and came on down to the poplars.

Defendant King moves to strike out the statement that the testimony of surveyor Reddy with regard to the sugar tree roots or any other matter is an inexcusable falsehood and the suggestion of the witness that the surveyor lent his testimony to any improper purpose or object.

And further this deponent saith not.

Signed JNO. A. SHEPPARD.

page 606.] Met this 18th day of December, 1902, at Charlottesville, Va., at the office of Duke & Duke in said City, pursuant to adjournment and agreement between the parties on the inst.

Present

Attorneys for contesting defendants

John T. Graham, Commr. in Chancery,

C. W. Campbell of the firm of Campbell, Holt & Campbell, for contesting defendants.

Attorney for defendant Henry C. King,

Judge M. F. Styles.

JUDGE R. T. W. DUKE, JR., a witness introduced in behalf of the contesting defendants, after being duly sworn, upon oath testified as follows:

EXAMINED

By Mr. Campbell.

Q. State your age, residence and occupation?

A. My age is forty-nine years. Residence Charlottesville Va. Occupation, attorney at law.

Q. Do you recall the pendency of this case—i. e., State of West Va. vs. H. C. King & others in the Circuit Court of Wyoming Co., West Va.?

A. I do.

Q. When was the first time you ever heard of this suit.

A. In the month of June, 1894.

page 607.] Q. Where were you at that time?

A. In Ocean Grove, New Jersey.

Q. If you went to Wyoming Circuit Court for any purpose, state when it was, what was wour object in going, and what you did after you got there?

A. In the month of June, 1894 on the 21st of the month I left Charlottesville with my wife, who was very ill at the time, to go to Ocean Grove, N. J., where an aunt had a cottage. I arrived in Ocean Grove on the night of the 21st. On the morning of the 23rd I received a telegram from Mr. Eugene Ellicott, asking me to go at once to Oceana, Wyoming Co., West Va. That telegram had been sent to Charlettesville, and from Charlottesville forwarded to New York, and from New York was either transmitted to me by wire or by 'phone—I no not now remember which. Not having found the telegram amongst my papers, I suppose it must have been transmitted to me by 'phone from New York. On receipt of the telegram I at once left Ocean Grove, N. J., came to Charlottesville, and on the evening of the day of my arrival here, left on the C. & O. rail-road, reaching Kenova next morning, and from there went to Davy Station on the N. & W. rail-road where I was informed I could get a horse to take me to Wyoming or to Oceana. On my arival at Davy I found that I could not get a horse for love or money. I then proposed to take a train in the afternoon to go to Dingess and from there to go to Oceana by Logan Court House. The train was eight hours late, so I left Davy early on the morning of the next day, got to Logan Court House to dinner and thence drove to the house of a man named Doss on Buffalo Creek. Next morning, which was on the 27th, I arrived at Oceana about one o'clock and was met in

page 608.] front of the hotel by Mr. Eugene Ellicott, who was very much excited and informed me that he had been looking for me with great anxiety, that the case was then under discussion in the Court House. I then asked Mr. Ellicott the nature of the case. Up to that time I had not been fully informed as to the nature of the proceedings. He informed me that it was a suit for the redemption of a patent, known as the Robert Morris Five hundred Thousand Acres, and that the counsel I had employed in Logan County, and who was also in his employ, Mr. H. K. Shumate, was then discussing the case for parties who proposed to redeem the tract. I at once went with Mr. Ellicott to the Court House and found Mr. Shumate in the act of addressing the Court. When he took his seat I introduced myself to the Court, never having been in the Court or having seen Judge McClaugherty before, and told him that I understood that I was interested, or might be interested in the case then at bar. My impression is that Mr. Shumate at that time, either from his seat or coming up to me, stated that none of my clients and those whom he represented along with me, had anything to do with the suit, and that the case was one of the sale by the State of the five hundred thousand acre Morris tract. I at once told the Court that I understood—and, in fact I knew—that a suit for the some purpose had been brought in Logan County. Judge McClaugherty then asked me whom I represented, or if I represented any parties to the record. I told him I did not know whether I represented anybody or not, but would ask to appear as an *Amicus Curiae* at that time, to have the case postponed until I could examine it. Judge McClaugherty very kindly at once said that no further action should be taken in the cause until I should examine the papers. I left the Court

page 609.] room with Mr. Ellicott and, I think, Mr. Sheppard, whom I then saw for the first time on the occasion of my being in Oceana, although I had known him for a good many years. I mean by this that this was the first time I had seen him on this trip. As we left the Court room we were approached by Mr. Shumate, who told me that there was no occasion for excite-

ment or anger upon my part in regard to him; that he did not consider that his and my clients were affected by the proceedings; and that he had an understanding with Mr. Styles, who represented Mr. King, that if our interests in any way conflicted with his, that Mr. Shumate was not to consider himself in any way to take any action that *would* affect us. Being very tired from the long trip and excitement, I am afraid that my manner was not very courteous towards Mr. Shumate, and he very soon left us. Mr. Sheppard then informed me fully as to the nature of the case, and told me that he was satisfied the case would have to go back to rules. We then got the papers and examined them, and I found that no clients whom I represented were in any way parties to the suit. My recollection is that nothing else was done upon that day or the next, but that on the next night, the 28th of June, the matter was brought up in the Judge's chambers at night and quite a heated argument upon the technical points of the case took place between Mr. Sheppard, Col. Childers, Mr. Shumate and Mr. Styles. I took no part in the argument, although I may have done so in the general discussion, because a great deal of talk took place at the time, pro and con, and the result was that Judge McClaugherty remanded the case to rules, holding that it had never been properly matured. If my recollection serves me right, I left Oceana next morning at 7 o'clock, and from that time on, heard nothing more about the case in Wyoming that I now recall until probably some time in '96, when Mr. Taylor Vinson, attorney of Huntington, who represented some party to the record, I think a Mr. McClintock, informed me that a stipulation had been entered into between Mr. Styles and Mr. Sheppard and himself, I think, although I am not certain as to whom the parties were, by which it was agreed that no further action should be taken by either side in the case in Wyoming until the case of King vs. Mullens had been decided in the Supreme Court of the United States. I subsequently saw a copy of this stipulation, and therefore gave myself no further thought or care in regard to the Wyoming case, supposing of course that no further action would be had in it, pro or con, until the said case of

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King vs. Mullens was decided. I may say that I have refreshed my memory in regard to these occurrences by reference to a daily journal which it has always been my habit to keep since 1878, and therefore have stated dates and occurrences with some particularity, my memory having been refreshed by a reference to my journal for 1894.

Q. Did you ever afterwards appear in this case in Wyoming County?

A. I never did. I never was in Wyoming Co. but twice afterwards. On both of these occasions I am under the impression I was accompanied by you, Mr. Campbell, and my visit on those two occasions was in regard to certain disbarment proceedings which had been instituted in Wyoming Co. before Judge Saunders vs. Mr. H. K. Shumate and Mr. Styles. I have never appeared in the proceedings in Wyoming in any way whatever for any client either a party to the record or otherwise, except as herein stated.

Q. Was it your purpose by what you said and did at the June term 1894 of Wyoming Court to appear to that case

page 611.] for any person whom you represented, or to interpose any matter of fact or law against any steps in that case?

A. If I had found any client a party to the record in that suit at that time and have thought it would be to their interest to have appeared, I would have done so in such manner as I might have been advised would have been best for the client's interest, but on examining the papers I found that no party that I represented was a party to the record, and I did not appear, and would not have appeared under he circumstances until I had thought the case was in proper shape for such an appearance.

Q. It is said that Egbert Mills and Egbert Mills Trustee, and his associates took and prosecuted an appeal to the Supreme Court of Appeals of West Virginia from the decree of redemption in this cause pronounced the 30th of Sept. 1897. What do you know about that allegation?

A. As for as I know anything about it, the allegation is untrue.

CROSS-EXAMINATION

By Judge Styles, attorney for the defendant Henry C. King.

Judge Styles of the counsel for defendant King, moves to strike out from the foregoing testimony all the alleged statements of other persons to the witness.

Thereupon counsel for defendant King proceeded with the cross-examination of the witness as follows:

Q. Was not an objection made by you to the Court proceeding with the case at Oceana based upon the grounds that it was without jurisdiction by reason of the prior institution of another suit affecting the same tract of land?

A. I do not think that any objection was made by me whatever. I think I stated in Court with a good deal of
page 612.] emphasis that there was another suit pending in the County of Logan, but that I made any formal objection as attorney for any one I can emphatically say I did not.

Q. Do you recall as to whom or in what respect the order of publication was defective?

A. I do not.

Q. Was it not as to the unknown heirs of some of the persons in the chain of title to the Morris grant under whom Mr. King claimed, and did not I at that time announce to the Court that the ancestor of such unknown heirs had parted with all title during his life time, and that the records disclosed that that title had come down by conveyance to Mr. King, and that he was willing to waive any defect and take the chance upon proceeding without further publication?

A. I am inclined to think that that statement was made. Your stating it recalls it to my memory. I think so, but I am not sure but what there were other defects in process. I made no memorandum in regard to this as I did in regard to other facts because when the case was remanded to rules I dismissed it from my mind.

Q. Were not yourself and Mr. Sheppard and Mr. Ellicott and other opponents of Mr. King in consultation together, and

co-operating with a common purpose with reference to the suit at that time?

A. We were not. Mr. Ellicott and myself had had many conferences in regard to the proceedings in Logan County as to the best method of defending the interests of our clients whenever it became necessary in that suit, but I had never heard of the suit in Wyoming until I received Mr. Ellicott's telegram. Mr. Sheppard and myself had never had any conversation or consultation in regard to the suit in Wyoming.

Q. At what time did Mr. Sheppard become coun-
page 613.] sel for you, or for persons with whom you were interested in the King litigation?

A. I have never considered Mr. Sheppard as my counsel, or as counsel for parties I represented in the King litigation. Mr. Sheppard was never employed by us to my knowledge in regard to this litigation, but had been our counsel in various matters after we found that Mr. Shumate had taken retainers upon sides we considered against our interest.

Q. In speaking of Mr. Sheppard's becoming counsel for you or with you for parties interested with you, I referred not particularly to this cause, but to the general litigation instituted by or against Mr. King with reference to the Morris grant.

A. I could not now recall when we employed Mr. Sheppard in regard to a good many cases in Logan County—now Mingo. The Firm of Sheppard and Ellyson at Logan Court House had represented us in various matters of litigation prior to this trip to Wyoming, but I am very positive that Mr. Sheppard was never employed by us regularly until a good while after this visit to Oceana. I could easily give the dates if I had my vouchers as to fees paid Sheppard & Ellison, and Mr. Sheppard, but they are not in the Charlottesville office, but are in New York. I am very positive, however, that we paid Mr. Sheppard individually no fees that amounted to anything until he commenced the examination of titles for us some time after

this litigation in Wyoming began. I do not now recall the dates.

Q. You expected, I presume, that Messrs. Sheppard & Ellyson would look out for your general interest in matters relating to the King litigation?

A. On the contrary, I did not, if in any way it conflicted with Mr. Sheppard's duty as attorney for the School Land Commissioner. In the section of country in which I live it is not our habit to employ lawyers who represent opposite sides of the case, and I had no idea of employing Mr. Sheppard in any manner in which it might cause him to conflict with his duty to other clients, and I have never done so.

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Q. Did you take any steps to ascertain what was done in the present case upon the remanding of the case to rules?

A. I do not think that I ever had anything more to do with the suit in Wyoming or ever made any inquiries about it after I was informed of the stipulation that had been entered into, and to which I have heretofore alluded.

Q. Did you prior to that time and during the period within which four amended bills were filed?

A. I did not, and until today I do not recall that any amended bills were filed, or that I knew that any amended bills were filed until I saw the printed report, though it may be possible I may have heard of it.

Q. You were a claimant in 94 and for some time thereafter of certain lands within the lines of the Sells' Survey of the Morris grant?

A. I represented various gentlemen who had purchased lands or mineral rights within a territory bounded by what is known commonly as Sells' Survey of the Morris patent.

Q. The title to the claim to some of those lands stood in your own name, did it not?

A. It did.

Q. Who were the gentlemen to whom you referred as persons whom you represented?

A. They were the gentlemen represented by the Trustees who are at present parties to these bills—I think Mr. Mills, Mr. Lawson, and Mr. Arthur Bright. These gentlemen were Mr. John F. Slaughter, Mr. Luther Kountze, Mr. Bishop, and several other gentlemen whose names I can not recall now without reference to my books.

page 615.] Q. You or those whom you represented, bore the expense or a portion of the expense of the proceedings you have referred to for disbarment in Wyoming Circuit Court, did you not?

A. I do not know that we did. Certainly my own expenses were paid and the expenses of Mr. Ashbridge, who represented Mr. Stewart Wood, and I am inclined to think that he and I may have paid Mr. Campbell's fees and expenses, though I do not remember. I am not sure.

Q. The part that you took and the expenditures that you made in connection with the present suit were made in behalf of the gentlemen whom you designated as trustees, Egbert Mills and others, were they?

A. I do not know that I have expended any money in the present suits beyond payment of counsel fees to Messrs. Campbell, Holt & Campbell on behalf of the gentlemen whom you mentioned. Whenever they have sent me any bills to be paid, I generally pay them.

Q. Do you recall the terms of the telegram from Mr. Ellicott to yourself?

A. I have no recollection as to the exact verbiage of the telegram, except that it was very urgent—so much so that I left a very ill wife to hurry off to Wyoming.

Q. The telegram or some accompanying communication gave you to understand that the action being taken at Oceana related to the King land, did it not?

Q. I do not think that the telegram mentioned King, but as Mr. Ellicott and myself had been conferring at Logan Court House in regard to suits there brought or contemplated by Mr. King, I inferred that it referred to this matter, or to some suit brought by Mr. King. There is no doubt about it that however Mr. Ellicott's telegram was worded, it made me think that Mr. King was taking some action, of what nature I did not know, nor did I know until I reached Wyoming Court House and examined the papers.

[page 616.]

Q. Was not the question of going back to rules for a new order of publication, or to amend the bill, a matter left to the counsel for the state, and did he not at your suggestion, and that of Mr. Sheppard and Captain Ellicott elect to go back to rules?

A. I have no recollection of making any suggestion whatever to the attorney for the School Land Commissioner in Wyoming, or of any one else doing so. I think it highly improbable that I would have made any suggestion whatever to him.

Q. Did not Mr. Shumate cease to represent your clients at, or shortly after the time you were at Oceana? Was not his relation with you terminated about that time?

A. I do not think our relations with Mr. Shumate were terminated for some time thereafter, as I find a reference in the Fall in my journal of having been at Mr. Shumate's office, and my recollection is—though of this I am by no manner of means positive—that Mr. Shumate represented us until the beginning of the next year, after which time all relations of every character between us ceased.

Q. That would be about the time that he was engaged with myself in the trial of the King ejectment cases at Parkersburg, would it not? or prior to that time?

A. I really cannot say. I do not remember.

And further this deponent sayeth not.

R. T. W. Duke, *Jr.*

page 616*a*.] MR. EUGENE ELLICOTT, introduced on behalf of contesting defendants, being next duly sworn, deposeth as follows:

By Mr. Campbell.

Q. State you age, residence and occupation?

A. I am fifty-six years of age. Residence Philadelphia, though spending the winter in Baltimore. I am not in any business.

Q. Do you know Stewart Wood of Philadelphia?

A. I do.

Q. How long have you known him?

A. About twenty-five or twenty-six years.

Q. Were you ever in his employ with reference to certain lands owned by him in what was formerly Logan, now being situated in Logan and Mingo counties, West Va.?

A. I was.

Q. About when did you enter that employment and when did you leave it?

A. Beginning about the 1st of March, 1890, terminating about the 1st of Jan., 1895.

Q. Do you remember the occasion of Judge R. T. W. Duke's visit to Oceana, Wyoming County, West Va., in June '94?

A. I do.

Q. Do you remember the suit of the State of West Va. vs. Henry C. King & others for the sale of five hundred thousand acres for the benefit of the School Fund?

A. I do.

Q. Did Stewart Wood have any person as a representative in West Va. during the time you have mentioned from 1890 to the 1st of Jan., 1895.

A. Yes.

page 617.] Q. Who was it?

A. Brown, Jackson & Knight, Charleston; and H. K. Shumate, Logan.

Q. Did Stewart Wood by yourself, or Brown, Jackson &

Knight, or H. K. Shumate or any person else appear in this case in Wyoming County?

A. As to legal appearance, no.

Q. State what you did yourself, or had done, if anything, in reference to this case?

A. The redemption proceedings brought in Wyoming were sprung on we people at Logan Court House only about two weeks before the time set for the hearing, and we then learned of it accidentally, there being very little intercourse between the two places. A Mr. Robertson, a member of the Wyoming bar brought to Logan Court House the news of this proceeding being instituted, very much to the surprise of every one, because we all knew that redemption proceedings were pending at Logan. Several of the Logan lawyers got together and discussed the matter and decided to attend these proceedings at Wyoming. I went merely on a tour of observation, as was my custom. I considered it one of my duties to keep myself informed of what was going on for the benefit of our lawyers. In discussing the matter with Maj. Nighbert, who was co-owner with Stewart Wood in several tracts, he told me that it was a matter between the respective attorneys of the School Land Commissioners of the two counties—that is to say, Mr. *Sheepard* of Logan and Col. Childers of Wyoming, and after careful discussion with Maj. Nighbert we concluded that Mr. Sheppard's interest dictated that he look after the case, and we were satisfied that he was abundantly able to do so. However, on Tuesday,
page 618.] the 26th, following the Monday fixed for the hearing, I went to Wyoming accompanied, merely for company's sake by Mr. Charles Turley, John Sheppard and, I think, Mr. Ben Ellyson. I had not been in the town over the night before I understood that my conception of the case in Logan was correct—that is to say that it was a contest between Mr. Sheppard of Logan County, and Col. Childers of Wyoming. I telegraphed Judge Duke to the effect that it was important that he should be on hand as an observer like myself, or as an at-

torney, as he thought best. Upon Judge Duke's arrival I hastily explained to him that the hearing was at that moment taking place, whereupon he entered te Court room, and was challenged, as well as I can understand, by Mr. H. K. Shumate as to his right to appear in the case, as his clients were not parties to it; whereupon the Court took up the matter, and Judge Duke explained that he would appear as the friend of the Court. After some conversation between Judge McClaugherty and Judge Duke, the former said that he would adjourn the case for that time in order that Judge Duke might have an opportunity to familiarize himself with the case. I might, in order to emphasize what I have said, state that it had been my custom to attend hearings of one sort or another, not in Wyoming particularly, but any case that seemed to affect Mr. Wood's interest; so going to Wyoming was not at all singular, as I clearly understood the contest was between, as I said before, the School Land Commissioners of these two counties.

Q. Did Brown, Jackson & Knight, or any member or representative of that firm ever attend upon this case in the Circuit Court of Wyoming County on behalf of Mr. Stewart Wood?

A. Never to my knowledge.

page 619.] Q. Did Stewart Wood ever interpose any matter of defense, either of law or fact to any decree or proceedings in this case in Wyoming County?

A. I am scarcely able to answer that, as my recollection is hazy, but according to the aforesaid hazy recollection, no—he did not.

Q. It is averred by Mr. King that Stewart Wood prosecuted an appeal from the redemption decree in this case on the 30th of Sept., 1897, to the Supreme Court of Appeals of West Va. Did or did not Mr. Wood prosecute any appeal from that decree?

A. I am unable to answer that, having severed my connection with Mr. Wood the 1st of January '95.

CROSS EXAMINATION

By Judge Styles.

Q. In Jan., 1895 you had no interest in, or oversight over the affairs and interests of Mr. Wood, or the litigation affecting them, or the litigation affecting the Morris grant, had you?

A. No, with this qualification. In the winter of '95 I accompanied Mr. DuBois Miller, a member of the Philadelphia Bar to Parkersburg. This I did at the instance of Mr. Stewart Wood, and the only profit to me in the trip was that I needed a week's outing, and Wood and myself agreed that that was a very easy way to take it. I was merely a spectator in Court.

Q. At the time of your visit to Oceana when the present suit first came on, was not the record, or a transcription of it, of the suit of the State vs. Lemoyne in Logan County exhibited to the Court, and an effort made to have the present suit dismissed, that effort being made by some of the gentlemen who accompanied you?

A. Such an effort may have been made by the attorney for the School Land Commissioner of Logan County,
page 620.] but not at the instance of Stewart Wood or his representatives.

Q. They were rather in sympathy with the efforts of Mr. Sheppard, were they not, giving him moral support and encouragement?

(Note) Objection by counsel for Mr. Wood.

A. It is difficult to define what moral support and sympathy amounts to. I think as a general proposition I sympathized with the Logan County bar in all legal issues.

Q. Were you at Oceana at subsequent terms of the Court in reference to this case?

A. Indeed, Mr. Styles, I am unable to answer that.

Q. You were a member of the Wyoming bar, were you not?

A. No; at least I was never admitted on motion or otherwise.

Q. You were a member of the bar during the time you repre-

sented Mr. Wood's interest in Logan and the adjacent counties, were you not?

A. Yes; I have never qualified in the Wyoming Court.

And further this deponent sayeth not.

I day. 306 miles (from Baltimore to Charlottesville and return).

EUGENE ELLICOTT.

page 621.] And now this the 20th day of December 1902 the Contesting defendants announced to the commissioner that they have no further evidence which *the* wish to introduce upon the question of location and thereupon rested their case so far as the *puestion* of the location of the land in question is concerned.

It is agreed between the parties that on account of the *hilidays* the commissioner shall adjourn his proceedings until Wednesday January 7th, 1903, at his office in the city of Huntington, West Virginia, at which time the defendant H. C. King will resume the taking of depositions in his behalf.

J. T. GRAHAM
Commissioner.

page 622.] Resumed taking depositions on behalf of contesting defendants pursuant to agreement between parties at the City of Charleston, W. Va. this the 30th. day of January, 1903.

Present, John A. Sheppard, Counsel for contesting defendants. M. F. Stiles, for defendant H. C. King.

EDGAR P. RUCKER, a witness introduced on behalf of contesting defendants, being first duly sworn, testifies as follows:

EXAMINED

By Mr. Sheppard.

Q. What official position did you occupy in 1898?

A. I was attorney general for the State of West Virginia

for the four years beginning March 4, 1897, and ending March 3rd, 1901.

Q. Did you as attorney general have anything to do with the appeal taken in the case of State of West Virginia vs. Henry C. King, from the decree rendered therein by the circuit court of Wyoming county on the 30th. day of September, 1897?

A I represented the interest of the State in that appeal and in the trial of the case in the Supreme court.

Q. By what authority or at whose instance did you appear in that case?

A. I was instructed so to do by the Board of Public Works, which Board is composed of the Governor, the Auditor, The Treasurer, Superintendent of Free Schools, and the Attorney General; I, however, as attorney general had nothing to do with the resolution employing me to represent the State in this suit, and did not vote when the resolution was offered, directing me to appear in that case.

Q. When was the resolution passed by the Board of Public Works directing you to appear in that case?

A. I find by looking at the records that it was on the 30th. day of August, 1898.

page 623.] Q. Please file as part of your deposition, a copy of the order, and mark same "E. P. R. No. 1?

A I herewith file said order as part of my deposition marked as suggested

Q. What did you do pursuant to the resolution of the Board of Public Works?

A. As I have been subjected to considerable criticism for my connection with this suit, I will take this opportunity to state under oath a full history of my connection with the case and services herein.

In the spring of 1898, or it may have been the fall of 1897, I think I am correct as to dates, Judge Ferguson came to me and asked me to allow the use of my name as attorney general in the petition to appeal this case from the circuit court of Wyoming

county, for the purpose of having the decree reversed; he said that he would prepare the petition, do all the work, but that he wanted to use my name as attorney general to the petition, and told me that his client would pay me for the use of my name a fee which he fixed at one thousand dollars. The fee seemed so large for the service to be rendered, that it excited both a desire to earn it, and the fear that I could not do so in my official capacity, and I asked him to give me twenty-four hours to think it over, during which time I consulted with my law-partner, B. F. Kellar, now Judge of the U. S. Circuit Court for the Southern District of West Virginia, who advised me that he could see no harm in my accepting the offer, but that he thought it was a matter that I must decide for myself. I accordingly did decide for myself and declined the proposition on the grounds that I did not think an official position should be used in that way and compensation received from a private individual for the use of my name as attorney general.

A short time after several parties came to me representing the contesting defendants in said suit of State of West Virginia vs. Henry C. King, who appeared in the case on behalf of said contesting defendants; I went with some of these parties before Governor Atkinson, and at my request he called a meeting of the Board of Public Works, consisting of the officials named above, to ascertain whether or not in my opinion the State was interested, and to employ counsel or to direct me as attorney general to look into the matter. I did look into the matter and advised the Board that I did not think the State was interested, that it looked to me as though it was a contest between individuals and that the State should not interfere. Acting upon my advice the Board decided not to direct me to take any part in the proceeding. In the month of August, as I find by looking at the records, Mr. John A. Sheppard, Mr. J. K. Anderson, commissioner of school lands for Mingo county, and J. S. Miller, attorney for the commissioner of school lands aforesaid, came to my office and called my

page 624.]

attention to the interest that the State had in the proceedings. I thought I saw then that the State was very materially interested, and referred these gentlemen to the Governor, who after hearing them, called a meeting of the Board of Public Works, and by resolution dated the 30th. day of August, 1898, the Board rescinded its former action by passing a new resolution directing me to appear on behalf of the State. A copy of this resolution has been heretofore filed with this deposition.

At the time the second resolution was passed, I again took no part whatever in the meeting of the Board which adopted it.

After this order was entered I had considerable correspondence with the attorneys representing the contesting defendants, which resulted in the Hon. John H. Holt, of the firm of Campbell, Holt & Duncan, then Campbell, Holt & Campbell, coming to Charleston, and spending the larger part of a week as I now recollect, with me, in the preparation of the petition for an appeal. In the meanwhile I had consulted with other counsel, some of whom favored a new suit attacking the decree in Wyoming county as fraudulent, some favored a bill of review, but I took the position that an appeal was the proper method, and after considerable conference with Mr. Holt, he came to my view, but I think he at first favored the bill of review in the

page 625.] case; he and I prepared the petition knowing at the time that the majority of the counsel who represented contesting defendants interested in the suit, were opposed to this plan, and thought that we had taken the wrong remedy. I think I am safe in saying that as to the method of procedure that I governed, and I very frankly said to counsel who represented the contesting defendants that while I was glad to have their assistance and wanted their assistance, yet in all questions of procedure or action, my will must govern, as I represented the State and the State was taking the appeal. I tried to be courteous to counsel who were assisting me and think I was, but I most always gave them to understand that as I represented the State, I would control the case at all times.

The petition for appeal was prepared as I before stated by Mr. Holt and myself; we both worked on it the greater part of a week, and my recollection is that parts were dictated by Mr. Holt and parts were dictated by me; it was re-written at least once and possibly twice.

When the case came on to be heard in the Supreme Court. I filed one brief, as attorney general, as my recollection now is, alone; I filed another in connection with Mr. Holt which he and I prepared, and my name was attached to a third one, which according to my recollection, I had very little to do with, probably nothing more than one or two suggestions when I read over the brief after it was prepared. This last brief as well as I remember was prepared by James F. Broun, of the firm of Brown, Jackson & Knight.

The case was argued orally *twice* in the Supreme Court, and I made an argument on both occasions and believe I concluded the argument on our side both times. When I say on our side, I mean on behalf of the State, and their parties who acted in connection with me in attempting to have the decree reversed.

Q. Did you have any client in that case other
page 626.] than the State of West Virginia?

A. I did not, and never received any compensation in any shape, manner or form for my services in that case, not even my traveling expenses. I want to say in this connection however, that when I was employed by the Board of Public Works to appear in this case on behalf of the State of West Virginia the Board agreed to petition the Legislature for a reasonable compensation for my services, as it was not necessary for me to appear in the case as the representative of the State, it being outside of my duties as attorney general, and I appeared by order of the Board of Public Works as aforesaid. I will also mention in this connection that this promise was remembered by only two members of the Board, Governor Atkinson who affirmed it and Mr. LaFollett, who opposed it. Counsel representing convices in the case were very valuable, and that they *would* person-

ally ask the Legislature to reasonably compensate me for my services, and this promise too, with the exception of one of the gentlemen Mr. John A. Sheppard was *entire* forgotten; and so far as the private individuals who were protected by this suit are concerned, to the best of my knowledge, none ever have in any way attempted to give me any compensation or have done anything in any way to secure for me compensation for my services in the case.

Q. There is some suggestion in the amended answer of Mr. King in this case about you acting as attorney for the State in the case of State of West Virginia vs. Henry C. King, but that you were in reality counsel for persons interested adversely to Mr. King's interest, and I believe without at this time reading the answer, it mentions or refers to the Ritter Lumber Company, state what you may have to say on this subject?

A. I think I have fully answered this question before. I not only represented no private individual interested in the suit, but as I said before when Judge Ferguson requested me to do so, I positively declined. I have been counsel

page 627.] for the W. M. Ritter Lumber Co., with an annual retainer, with charges for all services rendered, but was not counsel for it in this suit, nor do I know of any interest which it had which was effected by this suit. My recollection is that the only conflicts between W. M. Ritter Lumber Co. and the defendant King have been in the State of Virginia and not in the State of West Virginia. In the State of Virginia I sometime since represented the W. M. Ritter Lumber Co. or W. M. Ritter in suits with Mr. King, but for some years past he has been represented by special counsel in all these cases, and I never represented him in the suit of the State vs. King, and never charged or received any conmpensation whatever, nor did I consider W. M. Ritter nor the W. M. Ritter Lumber Co. as my client in that suit.

Counsel for defendant King at this place calls my attention to the fact that W. M. Ritter Lumber Co. or W. M. Ritter or

some of the companies that W. M. Ritter is interested in, have claims which conflict with Mr. King's on Panther and Bull creeks, in McDowell county, W. Va. I was not advised of that until this time. I therefore certainly could not have considered Mr. Ritter or the companies in which he is interested as my clients at the time I represented the State in the suit of West Virginia vs. King.

Q. As I remember, the amended answer of Mr. King states in substance that at the time you were appearing for the State in the case of State of West Virginia vs. King, you were counsel for persons who afterwards became interested in the subject matter in this case, adversely to the interest of Mr. King?

A. I am reminded that I was at the time this suit was brought attorney for the Thacker Land Co. and Thacker Coal & Coke Co. both of which companies had claims inside of the land claimed by Mr. King, but I have always understood that Mr. King advanced no claim whatever to the land which is owned or occupied by these companies, and certainly did not consider either of them my clients in that suit. I represent both of these companies with an annual retainer, with
page 628.] charges for services, and I never charged or expected or received anything from either of them for my services in the said suit. The lands owned and occupied by these two companies lie within the John Green which is disclaimed by Mr. King by his answer filed herein.

Q. Referring to the amended answer of Mr. King, I find the statement is this, that you were "procured, the then attorney general, E. P. Rucker, who represented and now represents *cundry* persons and corporations named in said fifth amended bill to lend him his official name and sanction," did you then represent any of the defendants named in the fifth amended bill in this case?

A. I do not recollect now what defendants are named in the fifth amended bill. I have stated before how my official aid was "procured" and do not deem it necessary to make any further

comment on that part of the amended answer. I now represent the Turkey Creek Land Company, a corporation, which so far as I know, not then in existence, owning land within the claim of Mr. King. If I represented any one who had claims adverse to Mr. King at that time other than the ones named, I cannot now recall them. Replying to counsel's suggestion I will say, that I do not at that time represent Torpin and others, Trustees, and had not for years.

CROSS EXAMINATION

By Judge Stiles.

Q. You stated that several persons came to you in connection with the proposed appeal, can you state who they were or what interest they represented?

A. My recollection is, and I will admit that my recollection is very indistinct, that these people were Mr. J. K. Anderson, John A. Sheppard, N. J. Kadle and Z. T. Vinson I think, but I might be mistaken as to the names of the parties. Mr. Sheppard was counsel for some of the contesting defendants, Mr. Kadle was sheriff of Mingo county, Mr. Anderson was commissioner of school lands, and Mr. Vinson, according to my recollection, was attorney for some of the contesting defendants.

page 629.] Q. Do you remember the occasion when Mr. Flournoy, and I think Mr. Mollohan, and myself and yourself, after the final argument upon appeal went before the judges at chambers and I presented a draft of decree which I desired to have entered as the decree of the court in that case?

A. I do remember the occasion very distinctly.

Q. Do you recall the nature of the decree that was proposed, if so, you may state it?

A. I do not recall the provisions of the decree except upon suggestion of counsel a few moments ago, I remembered some of the points in it. Counsel desired among other things that the decree should show a redemption of 10,000 acres of land within the boundary, and that he should be allowed to lay off this land.

I opposed this decree, and the court either refused to enter it or took it under advisement I have forgotten which, and the decree finally entered in the case was entirely different from the one offered by counsel.

And further this deponent saith not.

One day, no miles.

EDGAR P. RUCKER.

page 630.] The contesting defendants this the 10th. day of February 1903, resumed taking depositions in rebuttal of the evidence offered by the defendant King since the last proceedings had in behalf of the contesting defendants.

Present: C. W. Campbell, John A. Sheppard and Edward C. Lyon, attorneys for the contesting defendants.

Judge M. F. Stiles attorney for the defendant King.

C. CRANE, a witness introduced by the contesting defendants after being first duly sworn upon oath testified as follows:

EXAMINED

By Mr. Campbell.

A. State your age, residence and occupation?

A. Age 58 years, residence Cincinnati Ohio and am in the saw mill and log and lumber business.

Q. How long have you been engaged in the saw mill, log and lumber business.

A. For 37 years..

Q. To what extent have you been engaged in that business and what would be the average number of feet of lumber handled each year?

A. Rather largely. My average manufacture of logs and lumber would amount to about seventy-five million feet per year.

Q. What kind of timber have you handled?

A. The early part of my life it was walnut and poplar and the latter part—the present time it is principally oak and poplar.

Q. About what proportion of the logs and lumber handled by you is poplar?

A. About one half.

Q. How long have you been engaged in buying standing poplar trees having them felled and conveyed to your mills?

A. About 37 years.

page 631.] Q. During that time have you given your entire time and personal attention to the buying of poplar trees, oak and walnut and causing them to be felled and conveyed to your mills and also of the manufacture of the same into lumber and selling the same?

A. The principal part of my time has been engaged in buying and cutting timber of the kinds mentioned.

Q. Have you had any experience or observation as to the effect on poplar timber of the cutting of it in the months of April or May, if so state what your experience and observation has been?

A. I have been an observer of the cutting of timber and for the last ten years I have not permitted any timber cut in the months of April or May for the reason that the sap of the timber will *becomed* stained and doty and rotten and we consider the sap worthless, and after sixty or ninety days the sap boards become streaked and more or less doty and not marketable as a sound board.

Q. What kind of timber do you have reference to in your last answer?

A. I think it would effect all classes but most particularly poplar or soft wood.

Q. What kind of streaks do you some times find in the sap part of poplar as a result of felling the tree in the months of April or May?

A. They would be light and showing evidence of decay with little black streaks around them and through them the principal damage to the board would be the appearance of a decayed spot.

Q. I hand you a piece of poplar board picked up at a *plaining* mill showing some black streaks in the sap portion thereof, marked with the initials C. W. C., and ask you to examine the same and

the black streaks shown in the sap and state if these black streaks are *suck* ones as you have been referring to as results to be looked for in poplar timber cut in the months of April or May?

page 632.]

A. They are.

Q. I hand you the two sections of the poplar block taken from a poplar tree at the point designated by the figure 7 on the Stone Map, filed in this case, which block has been on file with the Commissioner since May last and referred to as the block taken from a line tree, and which bears two ax marks in the bark. Assuming that this block ~~that this block~~ was cut out of the live poplar on or about the 22nd. day of April 1902, at which time it showed on the ends sides and inner portion towards the heart to be perfectly sound and green, now examine this block, particularly the sap portions of it and state what in your opinion is the cause of the streaks and doty condition of the sap?

A. Well it resembles a log that was cut in April or May and had laid sixty or ninety days which would produce the decomposed or rotten effect which appears in the sap.

Q. Are the *bleak* streaks shown in the two sections of the block such as result from the cutting of the tree in April or May and the result of the decaying condition?

A. It is.

Q. Does it result invariable in the rotting and streaking of the sap of the poplar by the cutting of it in the latter part of April?

A. It does.

Q. About how many poplar trees do you have cut each year?

A. About from forty to fifty thousand trees a year.

Q. Do you permit any poplar trees to be cut in either April or May?

A. No I do not.

CROSS-EXAMINATION

BY Judge Stiles.

Q. Did you ever see this board marked C. W. C. before?

A. I couldent say that I have.

page 633.] Q. Do you know when the tree from which this board was taken was cut?

A. No sir I do not.

Q. Does the pinkish color near one end of the *borad* indicate a sap stain such as results from cutting the tree in April or May?

A. I should say it did.

Q. Does the staining resulting from such spring cutting and the streaks referred to effect the heart portion as *welo* as the sap portion of the tree?

A. I think it would.

Q. Does the entire log when cut in April or May become doty and streaked and partly rotten in the course of sixty or ninety days?

A. It would discolor and streak up to a great extent in that time.

Q. What occasions or causes the streaked and doty condition of wood cut in April or May?

A. I dont know that I have made a study of that only as an observation of the sawing of timber that was cut during those months. The sap will ooze out of timber cut during those months and turn black and from those experiences I have had for a number years forbid the cutting of timber during the months of April or May.

Q. Do you notice that the black lines in this board already referred to seem to be situated in cracks in the log or in the board as if the grain of the wood had been cracked or started by the falling of the tree?

A. I would not think it was caused by the falling of the tree The same which caused the streaks in the sap caused the streaks in the yellow part of the tree and that both was caused by cutting the tree out of season.

Q. I suppose it would result that whatever caused the streaks in the *yeallow* part caused the streaks in the sap

page 634.] would it not?

A. No my opinion would be that whatever caused

the streaks in the sap might have caused those in the yellow part but am not positive what caused those in the yellow part.

Q. Where you find wood streaked from the cause you mention does that streak usually run with the grain of the wood or against the grain?

A. It generally runs with the grain.

Q. Do you notice a line indicating a crack or starting of the wood about three or four inches in length extending from the principal double dark line on this board?

A. I do.

Q. Do you notice also three or four parallel cracks near the opposite edge of the board and near the yellow part of the board?

A. I do.

Q. Is it not usual for poplar timber in falling from the stump to be more or less shattered and strained by falling across knolls or hollows or otherwise?

A. Yes sir.

Q. If permitted to remain on the ground some time before being sawed up is not the sap very apt to settle in such cracks and seams and produce a local discoloration?

A. That is owing to a great deal when it was cut. Timber cut in February and March will lay from one to three years without discoloring. Cut in April or May it will discolor in from thirty to sixty days.

Q. Have you had any experience in studying or observing the effect of marks in trees such as surveyors make for corner or line trees and particularly the effect that such marks have in the wood when only made in the bark and do not penetrate the wood?

A. No I have never had any experience in that
page 635.] line.

Q. You do not know then how the wood might be effected by such a mark in the bark?

A. No I have never observed anything of that kind; only where there has been a chip cut out or an ax put into the main wood of the tree it will always show.

Q. What, in your opinion, caused the rather dark streak in the heart or yellow part of this poplar block as it stands, about an inch and a quarter from the inner portion of the block?

A. That is—in that piece I would consider that a natural streak that appears in poplar wood.

And further this deponent saith not.

C. CRANE.

1 day and no miles.

page 636.] J. S. THURMAND, another witness introduced by the contesting defendants, after being first duly sworn upon oath testified as follows .

EXAMINED

By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age 47 years, residence Turman, West Virginia and by occupation Hotel keeper.

Q. Are you a land surveyor and if so how many years experience have you had in land surveying?

A. Yes sir I am. I have had about 25 years experience as a surveyor?

Q. Was your father a land surveyor and if so did you do a good deal of work under him?

A. Yes sir he was, I did a good deal of work under him. I began at about the age of 16 years.

Q. What experience have you had in observing the lines and corner marks in trees and in taking out blocks of corner trees and counting the age of the hacks?

A. In several instances during my experience I have assisted in surveys where law suits were pending and blocked corner trees and also line trees.

Q. In your opinion would an ax mark which penetrates the live portion of the poplar bark, but which does not penetrate through

or in the wood show at the time or in after years any marks or results in the wood such as black streaks or otherwise?

Objected to by the defendant King.

Question continuing. I hand you a piece of poplar bark containing both the dead and live portions thereof and will illustrate by supposing that the hack penetrates the dead part and goes into but not through the live portion, would you find or expect to find any marks or streaks in the wood underneath, caused by the hack marks

A. My opinion is that in order to make an im-
page 637.] pression on the wood that an ax mark would have to reach the sap of the wood. Would have to penetrate the bark and reach the wood, in other words the cut would have to penetrate the entire bark and reach the wood

Q. I hand you two *section* of the poplar block showing two ax marks in the bark which block is the one taken from a poplar tree designated by figure 7 on Stone map and I will ask you to examine the ax mark and so say whether in your opinion that those marks are too crude and *prominant* to be one hundred years old?

Objected to by the defendant King.

A. I think not.

Q. I will ask you to examine the sap portion of the two sections and note the doted condition of the sap portions and the several streaks long and short, large and small shown therein and particularly the one about an inch and a quarter or an *incheas* and a half down in the wood showing two black edges with a white center about the width of one or more annual growths and will ask you whether in your opinion those streaks came as a result of either of the hacks in the bark or as a result of the decaying and rotting condition of the block?

Objected to by defendant King.

A. I see nothing to indicate that these marks came from the ax marks on the bark. The greatest disturbance seems to be up between the two marks. This however, is not uncommon in timber—these marks. I also notice that there seems to be one years growth of white wood between these two dark marks, that would appear to indicate that if any disturbance of the sap had caused the first

black mark that one or two years later the same cause had produced another. And again it seems that a number of years later a similar cause had produced another mark near the bark of the tree.

Q. Do you observe numerous small and short black marks in other portions of the sap portion of the block

page 638.] A. I do.

Q. Do some of those smaller black streaks appear underneath the hack and still deeper down in the wood than the ones particularly referred to?

A. Yes sir I see some deeper in the wood than this large mark.

Q. Suposing that that block was cut from a live growing poplar on or about the 22nd. day of April 1902 and that at that time it showed on the ends and the sides where it had been blocked out no signs of decay whatever but on the contrary the sap portion so far as disclosed by the taking of the block out was perfectly white and sound and healthy, what would you say was the cause of these black streaks and black portions now disclosed not only on the out side of the block where it was cut and split out but also on the inside where it has been sawed in twain?

A. The chemical action of the sap in the tree if cut in certain seasons will invariably discolor the wood, that is a well known fact among all lumbermen.

Q. What season of the year do you refer to?

A. Well in the spring time when the sap first rises in the timber. That is during the time that the new years growth is forming, after that is formed you can cut timber without having it discolor.

Q. In what condition do you now find the sap portions of these sections of the poplar block, as rotting or decaying set it?

A. The wood appears to be sound but is badly discolored.

Q. Do you observe any doty condition on the inside of the block

A. The one side has a very slight *appearence* of dote on a spot about four inches from the upper end of the block while the other side of the block has none.

CROSS EXAMINATION

Q. How many marks that penetrated part way through the bark but did not reach the wood have you blocked out and examined?

page 639.] A. I am unable to state how many but I have cut out and examined a large number, I am unable to state the number.

Q. Is it more usual for the marks on line and corner trees to be found merely in the bark and not in the wood?

A. In my experience on old surveys the marks on line trees were very rarely made through the bark as a rule on corner trees they are made through. There are exceptions however, in either case.

Q. What do you think caused the pink stain in the sap of this block?

A. I think the same cause that caused the dark stain caused the *pinc*. A discoloration of this timber produced by the action of the sap. Part of that pink stain seems to extend into the heart of the tree at the lower end of the block.

And further this deponent saith not.

J. S. THURMOND.

1 day and 228 miles.

page 640.] THOMAS BOGGESS, SR. a witness introduced by the contesting defendants after being first duly sworn upon oath testified as follows.

EXAMINED

By Mr. Campbell.

Q. State your age, residence and occupation?

A. I was 73 years old the 28th. day of last March, residence Ashland, Kentucky, occupation civil engineering and surveying

Q. How many years of experience have you had as a land surveyor

A. Well I commenced surveying in 1852.

Q. Have you done a good deal of land surveying in your time?

A. Yes sir.

Q. What experience have you had in examining old corner and land marks and black streaks in poplar containing such marks?

A. Well I have run a good many old lines of surveys on Tug River and among them

Q. About what date *where* those old surveys made?

A. Well I dont remember just distinctly; I think the Madison was made in 1787; then I run a Turnbull 22000 acres upon *on* Tug River.

Q. When was that survey made?

A. I dont remember when it was, I am not positive whether it was just before or just after the Madison survey was run, but I found marked lines and corners on both surveys.

Q. Did you ever block any old corners?

A. No sir I never blocked a corner in my life.

Q. Did you ever block any line trees?

A. No sir I never did. There are several other surveys—I dont remember the names of them some of the lines are marked on the 30,000 acre Green survey, which begins in the lower end of the bottom where the town of Williamson now stands on a corner of a large survey of older date than (the adjoining survey,) I dont remember the name of it.

page 641.] I run the division lines several miles between the two surveys I allude to.

Q. Did you find any stone or line trees on these surveys?

A. I found line trees but I did not run to the end corner except the beginning corner and I started of course at the beginning corner or what was shown to me as the *begining* corner. Wallace J. Williamson was the man that showed me the beginning corner. The timber was fallen but was lying there marked. That was on the farm where Wallace Williamson was born and raised—so he said.

Q. I hand you here a poplar block which was taken from a poplar tree on Knox Creek at a point designated on the Stone

Map by figure 7, I wish you to examine the two hacks in the bark of this block and give us your opinion whether or not these hacks are too *prominant* to be 100 years old?

A. They resemble marks that I found on the old lines that I run up in that country as more than a hundred years old. I should think they are that old at least.

Q. I call your attention to the condition of the sap appearing in this block and the black lines both large and small, long and short in the sap and ask you, your opinion whether they or any of them were caused by the hacks in the bark of this block?

Objected to by the defendant King.

A. No I dont see any connection at all, I dont see anything that would cause the streaks from the hacks. I find a depression in the wood that may have been caused by a hack in the sap of the bark; the lower mark on the bark was probably caused by cutting into the sap of the bark, thereby retarding the growth of the wood for a year or two. This is my impression. To my mind it cuts into the sap of the bark and not into the wood, for if it went into the wood the mark would be there of course, the mark would remain there.

page 642.] Q. What in your opinion caused those streaks in the sap portion of the block assuming that the block was taken from a live poplar tree and was cut out on the 22nd. day of April 1902 and a block at that time appearing to be perfectly sound.

Objected to by defen ant King.

A. The natural decay of the timber.

CROSS-EXAMINATION
BY Judge Stiles.

Q. After a mark has stood in the bark of a tree forty or fifty years would it undergo much change in *apearence* in twenty or thirty years more?

A. If it was a green tree it would not according to my observation depending very much upon its exposure whether it was east, west, north or south.

Q. Would there ordinarily be much difference in the *apearence* of a mark fifty years old or there about and one seventy five or a hundred years old, if made in the bark of a green poplar tree?

A. There would be some difference owing to the natural decay of the bark and the health of the tree the *appearence* would depend largely upon the health of the tree.

Q. Can one judge the age of a mark with any degree of accuracy after it gets to be forty or fifty years old?

A. Well the older the mark the more you will find it decayed as to the time that is mainly a matter of opinion or judgment.

Q. For whom did you do the surveying on Tug River that you have mentioned?

A. It was in the interest of different parties. The surveying of the Madison line was mainly of Church and Nigh of Marietta Ohio and that of the Green survey and the one adjoining was in the interest of the Williamson Mining & Manufacturing Co.

Q. Did you do some surveying or other work up in that country for Mr. Gaujot or under his direction?

A. Yes sir. I run part of the *TTurnbull* lands in the interest of Gaujot.

page 643.] Q. Are you the same Thomas Boggess whose deposition was taken in this case at Catlettsburg, Kentucky, during the past summer

A. Yes sir.

And further this deponeth saith not.

THOMAS BOGGESS, SR.

1 day and 30 miles

THOMAS BOGGESS, JR. another witness introduced by the contesting defendants after being first duly sworn upon oath testified as follows:

EXAMINED

By Mr. Campbell.

Q. State your age, residence and occupation?

A. Age 42 years, residence Ashland Kentucky, occupation surveyor and civil engineer.

Q. How many years experience have you had in land surveying

A. I have had about 16 or 17 years.

Q. What old surveys prior to the year 1800 have you surveyed upon?

A. I have been on the James Madison surveys on Tug River. I dont remember now how many there were of these Madison surveys.

Q. Were you along with your father in running on the Madison surveys?

A. I was.

Q. How many corner trees and line trees if any did you find on those surveys?

A. My recollection is three corner trees, that is three different corners standing on that survey. I dont remember of seeing any line trees.

page 644.] Q. How many corner trees were standing at each of these three corners?

A. I think there was one corner tree standing at each of the corners excepting at one corner where there were two trees.

Q. Did you ever do any surveying or observe any corner line trees upon any other old surveys made shortly before or shortly after the year 1800?

A. Those are the only ones that I have any recollection of.

Q. Take and examine the poplar block cut from a poplar tree on Knox Creek at a point designated on the Stone Map by figure 7 and examine the two hack marks therein and give us your opinion as a practical surveyor whether they are such as are known among surveyors as old or ancient hacks?

Objected to by defendant King.

A. Well in my judgment I would call those very old marks.

Q. In your opinion are they too crude or *promineant* to be 100 years old?

Objected to by the defendant King.

A. Well from the corners that I saw on the James Madison survey I would say that these marks were at least 75 years old and might be 100 years old.

CROSS-EXAMINATION

BY Judge Stiles.

Q. Did you block any of the corner trees of the Madison survey

A. No sir.

Q. The most of your professional labor has been in the line of civil engineering has it not and not in country land surveying

A. Well out of the 16 years mentioned there is about ten years of that in land surveying.

Q. Were the Madison surveys that you surveyed involved in litigation or were they corner trees in dispute, that is as to their identity?

page 645.] A. There *wasent* any suit at the time I made this survey, neither was there any dispute as to the lines.

Q. About how long ago or in what year did you do that surveying

A. My recollection is that it was in the latter part of 1882 or early in 1883.

Q. Have you seen those corner trees on that survey since?

A. No sir.

Q. Do you think there would be or is there generally an appreciable difference in the *appearence* of marks that are fifty years old and those that are seventy five, that is after a mark has been made forty or fifty years does it change very much in *appearence* in ten or twenty years or such matter thereafter?

A. Well that depends very largely on how the marks were first made in the tree, there must be some difference but it will depend on just how deep the original mark was cut in the bark.

Q. If you were shown marks that were twenty five years old others that were fifty and others sixty or seventy or seventy five years old do you think you could with certainty indentify and distinguish the different marks and classify them as to age?

A. I think that there would be a difference but as to *clasifying* them exactly I dont believe it can be done.

And further this deponent saith not.

THOMAS BOGGESS, JR.

1 day and 30 miles.

page 646.] G. S. STONE, a witness heretofore introduced by the contesting defendants being recalled by the same defendants testified as follows.

EXAMINED

By Mr. Campbell.

Q. Did you see and examine the ax marks in one of the poplar trees at what is called the Muzzle Corner of the Morris grant?

A. I did.

Q. Is there any difference in the *appearence* of those marks and the marks in the poplar block which you took from the poplar tree on Knox Creek at a point designated on your map by the figure 7 as respects their age?

A. There is.

Q. What difference do you note in the *apepearence* of the hacks in respect to the age of them?

A. The marks in the block taken from the poplar—at figure 7 on the map is larger and seems to be much more decayed than the marks in the poplar at the Muzzle Corner.

Q. State whether or not in your opinion the marks on that poplar block are too crude or *prominant* to be 100 years old?

Objected to by defendant King.

A. I am of the opinon that they could be 100 years old.

Q. Did you assist in chopping that block out of the poplar tree?

A. I did.

Q. Give us the date when you cut it out.

A. I dont remember—my attention is called to it was the 22nd. day of April.

Q. What other surveyor was with you at the time and assisted you in the work?

A. Mr. N. L. Reynolds.

Q. State what was the condition of the block at the time you cut it out and of the other portions of the tree which you

page 647.] cut out particularly whether there was any streaks or mold or decay or discoloration in the sap portions exposed on the block or other portions that you cut out?

A. It was in a healthy condition. I found no discoloration of any kind in the block or in any part of the tree in taking the block out.

Q. Did you observe any signs in the tree of decay or dote on taking the block out at that time?

A. I did not.

Q. Did you assist in taking out a block on the east side of the same tree and if so you may state whether you observed in the chips or block on that side any streaks or discoloration in the sap portion?

A. I did. As well as I remember there was no discoloration in the sap portion of the block taken from the east side. There was no discoloration in the chips or in any part of it as I remember.

Q. What is the *diamater* of this poplar tree?

A/ Thirty nine inches.

Q. How close to the waters edge of Knox Creek does it stand?

A. It stands on the bank of the creek and within seven feet of the waters edge.

Q. How far below the small branch that comes into Knox Creek at that point from the south side?

A. About forty feet.

Q. State whether the tree is leaning or erect?

A. It stands very straight.

Q. How many feet would you judge up to the first limb?

A. About fifty feet.

Q. Does it maintain its *diamater* of 39 inches pretty well for that distance.

A. It does.

Q. Describe the top of that tree?

A. It has some large branches that come out near the top of the tree which makes a large bushy top tree.

page 648.] Q. Were there any other trees standing at or near this poplar.

A. There were no other large trees near it.

Q. What kind of underbrush if any surrounded the tree and how dense was it?

A. There was considerable laurel around the tree and a small beech stood near it.

Q. Did the laurel reach up to and beyond the marks on both sides

A. It did.

Q. When were you at that poplar tree last and who were with you?

A. On the 2nd. day of this month, Mr. Campbell, Mr. Lyon and Levi Lester were with me.

Q. What did you find in the bark of this tree and how high up on the tree did what you find extend?

A. I found bird pecks on the bark of the tree which extended ten feet or more up the tree.

Q/ How did they appear with respect to each other, did they occur promiscuously, here, there and yonder or did they belt the tree in successive rows?

A. They were in successive rows which extended horizontally around the tree.

Q. About how far apart were the rows up and down.

A. I will say about six inches.

Q. Was there any chopping done on this tree when you were there on the 2nd. of this month.

A. There was.

Q. Did you examine any of these bird pecks to determine whether or not they had penetrated into the live part of the bark

and did you bring with you any part of the live bark illustrating this fact?

A. I did and brought some of the bark with me

Q. I hand you a piece of the vital part of poplar bark, you may please tell us where it came from if you know and how it stood in the bark?

page 649.] A. It come from thepolar tree above mentioned. It was cut perpendicular out of the bark of the tree?

Q. Which was the outer edge?

A. The side from which the bird peck enters.

Q. On whch side of the tree was that piece taken?

A. From the south side of the tree.

Q. Were there other bird pecks on the same side of the tree near this one and which penetrated through the dead part into the live part of the bark?

A. There were.

Q. Did you remove the bark on the south side where these pecks or holes had penetrated into the live part of the bark to see whether there was any signs or discolorations either in the live part of the bark or on the surface of the wood or down into the wood to the extent of a hundred years or more?

A. I did and found no discolorations in the wood either coming from the pecks or the holes or otherwise.

Q. Where were the blocks which you have in your lap taken from?

A. From the south side of the tree.

Q. When you got away from the notches in the tree from which the east and west blocks were taken did you find any discoloration of the sap portion of the wood?

A. I did not.

Q. I hand you a piece of poplar bark with certain marks cut on the inside of it and which has been with the commissioner ever since the poplar block was filed, you may state what you may know about it, where it came from?

A. I picked that up at the place where I split up the block from the east side of the tree.

Q. When did you pick it up with reference to the time when you split out the block?

page 650.] A. I picked it up on the day that I took the block from the west side of the tree.

Q. Is any part of the ax mark shown in that piece of poplar taken from the east side of the tree?

A. There is.

Q. Point it out to the commissioner.

A. It is here and on the edge and about midway of the piece of bark.

Q. When you were there again on the 2nd. of this month did you again make a search for the block taken out of the east side of that poplar tree, if so what was the result of your search?

A. I did., I could not find the block.

Q. Please open the poplar block heretofore filed with the commissioner and examine the condition of the sap portion on the inside and state what you find discolored in the sap part of the wood?

A. I find some black streaks in the sap part of the wood.

Q. In your opinion were any of these backs streaks caused by either of the hacks in the bark?

Objected to by defendant King.

A. In my opinion they were not caused by the hacks in the bark

Q. In your opinion what did cause them?

A. I am of the opinion they were caused from the decay of the wood.

Q. In your opinion would the cutting in to the vital part of the poplar bark, but not through it have any effect upon the wood by marking it or staining it in any way at the time of the hack or in after years?

A. I dont think it would, unless it would go through the bark and into the wood of the tree.

Q. What do you observe between the two largest and longest back marks in that sap portion of that block?

page 651.] Q. Nothing except the dead wood.

Q. What is the color of it and how long is it?

A. It is kind of brown and about six inches in length between the two streaks

Q. Where did you fix your point as the alleged location of the south east or four white oaks' corner of the Morris Grant, that is how far from the bank of Knox Creek and how far below a small branch?

A. At the foot of a hill about 250 feet from the bank of Knox Creek and about 200 feet below a branch known as Johns Branch.

Q. Did you observe any other stakes or hub or station in that immediate vicinity, if so where with reference to the bank of Knox Creek and the mouth of Johns Branch?

A. Near the bank of Knox Creek and about fifty feet below the mouth of Johns Branch I found a stake and a short distance below the stake there had been a stone planted in the ground.

Q. In running from your point to the alleged corner at Dan Justus how far to the right of this poplar line tree did you run?

A. 104 feet to the left of it, running eastward.

Q. Where would the line pass that poplar tree if you were to start from the stake and stone referred to near the bank of Knox Creek?

A. It would run about 100 feet to the left of the poplar going westward.

Q. Do you know the location of the L. B. Sipples tract of 156-1/10 acres on Beech Creek and conveyed to Wiliam H. Lawson Trustee on the 22nd. day of May 1900.

A. I do.

Q. Does that lie within what is called the Sell lines of the Morris Grant and out side of the line known as the Gilbert Creek and Turkey Creek line?

Objected to by the defendant King.

page 652.] A. It does.

Q. Do you know the location of the Matilda E.

Ferrell tract containing fifty-seven acres by a recent survey *sutuated* on Beech Creek, conveyed to William H. Lawson Trustee, by deed dated the 22nd. day of May 1900, and if so is same within the said Sell lines and without the Gilbert Turkey Creek lines?

A. I do and it is.

Q. Do you know the location of the Henry Vance tract containing 65-29/100 acres on Mate Creek, conveyed to said Lawson by deed dated the 17th. of November 1898, and if so is it within said Sell line and without said Gilbert-Turkey Creek line?

A. I dont know the location of this tract. It is outside of the Gilbert-Turkey Creek line but I do not know where it is with reference to the Sell Line.

CROSS-EXAMINATION
BY Judge Stiles.

Q. When you were on Knox Creek on the 2nd. of this month at the alleged line tree was any of the gentlemen who have been appointed official surveyors in this case or any person representing Mr. King present also or so far as you know advised of the intended visit to that locality?

A. There was no surveyor with us nor none of Mr. Kings representatives that I know of.

A. When you took the blocks out of that tree last spring and prior to that time were you looking for black streaks in the tree or merely for hacks which would indicate that the tree had been marked into the wood?

A. I was looking for hacks, also for any evidence of hacks that I could find.

Q. If there had been a dark streak about a sixteenth of an inch wide running through the block you took out or a part of it would it have attracted your attention so that you would remember it at the present time?

page 653.]

A. It would.

Q. If such a streak had no connection with the mark in the bark and was itself no indication of a mark why would it have

arrested your attention when you were merely looking for evidences of marks?

A. The black streak in the wood indicates some obstruction in the sap or out side of the tree, therefore I would expect to find a mark—an ax mark or something of the kind if I were to find a black streak in the wood.

Q. If the black streak in the poplar block that you took from the tree last referred to had appeared about 107 annulations below the bark what conclusion would you have reached with reference to the cause of that streak and the time of its occurrence?

A. Unless it had of shown a mark in the black streak I would consider it to be a stain caused from the decay of the wood.

Q. About how long ago in your judgment were the bird pecks made in the bark of the poplar tree on Knox Creek that you have produced in evidence or have you any means of estimating the age

A. From the decay of the dead bark around the marks or bird pecks they seem to be very old—perhaps 100 years old.

Q. Have you ever examined Bird Pecks known to be 100 years old in the bark of a poplar tree.

A. I have not.

Q. Do you judge that the various Bird Pecks in the bark in question were all made about the same time?

A. I measured several of these bird pecks and found them to range from one half to one inch deep. I could not state as to whether they were all made at the same time or not.

Q. How would you judge or estimate the age of the bird pecks would the depth indicate it or would it be shown in some other way

A. I would estimate then from the decay of the bark

Q. I hand you the wide short piece of *brk* with five
page 654.] or six holes in it, do you discover any difference in the ages of these holes and if so indicate *wich* in your judgment is the oldest and which is the youngest?

A. They all seem to be about the same age, some are larger than others. I am of the opinion that the difference in the size

is caused by large cracks in the bark. The holes when first made are small in *diametar* but with age they slough off and become larger, that is the bark around the hole decays and they become larger.

Q. What is it that leads you to think that those holes are all about the same age?

A. From the general appearance of the bark around each of the holes.

Q. Do you regard all of those several holes as being the same in *appearence*?

A. I do.

Q. How do he holes in these two blocks correspond with those in the bark as to apparent age?

A. They seem to be about the same

Q. How do the holes in the strip of bark that came off the east side of the tree correspond with the age of the others.

A. They seem to be about the same.

Q. How do you account for the hole in the last mentioned bark having gone through the bark so as to leave a foramen at the present time?

A. It seems to have gone through the vital part of the bark.

Q. Did these other bird pecks in your judgment go into the vital part of the bark?

A. Some of them did.

Q. Can you tell with reasonable certainty whether these bird pecks are twenty years old or fifty years old or seventy five years old or older or younger than those ages?

A. I cannot state the exact ages of any of them.

Q. Can you tell the relative ages of them at all?

page 655.] A. I cannot.

Q. That being the case how are you able to give an opinion as to the age of the alleged hack marks which do not go through the bark on the same tree?

A. From the decay of the bark around the marks.

Q. Does not the decay of the bark around the bird pecks furnish an equal guide to their ages?

A. It does.

Q. Would not the location of this tree being close on the bank of the creek and surrounded by a thick growth of laurels tend to promote rapid decay and moulding from dampness,—decay of the bark I mean?

A. I am of the opinion that it would cause faster decay than it would if it was in open high ground.

Q. Does not the bark of the tree itself show a dead and moldy decayed *appearence* on the exterior as high up as the top of the laurels?

A. To some extent it does.

Q. Do you no notice on this poplar block taken by you from the Muzzle Corner a streak running through the hack that appears on one side of the slab and terminating at a point opposite the hack that appears on the other side of the slab?

A. I do.

Q. The dark streak that has been mentioned appearing in the poplar block you took from the tree on Knox Creek occupies about a corresponding position *wth* reference to the alleged hacks in the bark, does it not?

A. It does.

Q. The streak or seam referred to on the poplar block from the Muzzle Corner shows dark and discolored does it not?

A. It does.

Q. On this Muzzle Corner block the hacks and streak referred to at one time were located in the bark were they not?

page 656.] A/ Yes sir.

Q. Do you discover any wave or depression or irregularity in the *brk* directly opposite the hacks?

A. I do not.

Q. How many trees have you ever blocked and examined where the marks did not go through the bark?

A/ I *couldent* state as to that. I have blocked several

Q. Is it not the tendency of the growth of the wood and bark

of a tree to correct and remove or conceal irregularities and blemishes caused by marking and bruising so as to produce in the course of time a normal *appearence* of both wood and bark where they connect on the surface of the tree.

A. It is.

RE-DIRECT EXAMINATION.

Q. In blocking line and corner trees in cases *here* you find the ax has penetrated the wood do you find a streak or discoloration of the wood at or near the marks of the ax, similar to the one disclosed in the Muzzle corner block?

A. I always find a discoloration around the mark. In some instances the growth of the tree is not broken between the marks

Q. Do you sometimes find where the discoloration extends from one ax mark up to another?

A. In my opinion the block taken from the Muzzle Corner is the only one that I ever saw that extended from one hack to the other

Q. Is there not a material difference in the a*ppearence* of the streak in the Knox Creek block consisting of two black lines *separtated* by one white one and the solid black streak in the Muzzle Block or slab.

page 657.] A. There is.

RE-CROSS EXAMINATION.

Q. You find dark streak in the Knox Creek block in the sap and the dark streak in the Muzzle block in the heart of the tree do you not?

A. I do.

Q. This Knox Creek block was wrapped up green in cotton batting and done up in oil cloth and kept in that condition for a long time was it not, unexposed to the air or sun?

A. When I took the block from the tree I wrapped it in oil cloth. As to how long it was wrapped in cotton I could not state

Q. Would its being wrapped up in the manner I described account for the mildewed *appearence* of the block?

A. I think it would.

And further this deponent saith not.

1 day and

G. S. STONE.

page 658.] Adjourned until tomorrow morning at the same place.

J. T. GRAHAM,
Commssioner.

Resumed proceeding this the 11th. day of February 1903 pursuant to adjournment on yesterday.

Present: Same attorneys as heretofore.

THOMAS J. MATTHEWS, a witness heretofore introduced by the contesting defendants being recalled by same defendants testified as follows

EXAMINED

By Mr. Campbell.

Q. I hand you both sections of a poplar block which was taken from a poplar tree on Knox Creek on the 22nd. day of April 1902 about which you have testified heretofore. Since your former testimony the block has been sawed into two sections; please examine the surfaces disclosed by the sawing and see whether or not there is any indication that either of the hacks in the bark left any kind of trace or sign in the wood?

A. I dont see any.

Q. I call your attention to the two parallel black streaks somewhat similar in *appearence* to pen and ink mark on rough pencil paper with a streak of white wood between the two and located about one and a quarter to one and a half inch below the surface or edge of the wood and also the *irreſiupar* black line lying above but much nearer the bark and will ask you to give your opinion whether these streaks or discolorations resulted from the ax mark in the bark?

A. Well I think not sir I see no indication of it. You will find marks in almost all poplar wood, sometimes they are black and red and yellow; nearly all poplar has the same kind of marks in them. For instance you can go to a lumber yard *were* they have sawed and dressed the lumber building pur-
page 659.] poses and you will scarcely find a single plank but what you will find somewhere on it a mark similar to that one.

Q. What is the effect on the sap portion of the poplar wood to cut the poplar tree in or about the 22nd. day of April?

A. Well I have had very little experience in that particular date for a mark, but I have heard lumbermen say that they *woudent* allow poplar timber cut in April or May on account of its leaving those black and discolored marks in the sap of the tree.

Q. What do you find to be the condition of the sap in these two sections of the block referred to?

A. Well I dont know just exactly what you mean by the condition

Q. Are there any other discolored streaks through the sap portion of those blocks, both red and black above and below and beyond the one particularly referred to?

A. Well there is both black and red streaks through it, other than the ones that are there.

Q. Where are those other streaks located in the block?

A. The red streaks are the furtherest from the bark and the black streaks are nearer to the bark and I see some dark streaks farther from the bark than the red.

Q. Will a cut in the live part of poplar bark, but which does not penetrate through to the wood leave any mark or stain or discoloration in the wood?

A. I never have been able to detect any.

Q. Where a blow in the bark is sufficiently heavy to bruise the sap between the bark and the wood and injure or destroy the *adheasion* between the bark and the wood, what if any thing, will

you find in after years in the wood, and how will it be connected or related to the next annual growth immediately over it?

A. Well here might when the sap is up, the tree might be struck a heavy blow with the back of an ax or a sledge hammer or some thing of that kind hard enough to mash the bark next to the wood In that case it would leave a right black mark between the bark and the wood. the next annual growth over it would be just like any other annual growth but it would leave a black mark under where the blow was made and that might extend up and down the tree for a considerable distance, just the same as an ax mark that had cut through to the wood in the spring when the sap was flowing freely—it would produce the same kind of a mark.

page 660.]

Q. Would such black place or streak left from such a blow have any resemblance to the small black streaks now appearing in the sap of the poplar block referred to?

Objected to by the defendant King.

A. No it *wouldent;* the mark would be where it cut to the wood just like this mark on the block from the Muzzle corner, except if it was made when the sap was flowing it would be blacker than the one on the Muzzle block.

Q. Would the force of a blow from the ax which made the mark in the poplar bark from Knox Creek and which marks did not go through the bark, be likely in your opinion to so bruise or affect the sap between the *ark* and the wood or so affect the wood as to leave a stain or black mark in the wood?

Objected to by defendant King.

A. When the sap is flowing freely and using a very dull ax or hatchet, if the ax *dident* go very nearly through the bark I dont think it would effect it, but if *ithe* ax went very near through the bark with them conditions, it might produce a stain.

Q. Where the sap was bruised and the *adheasion* between the bark and wood injured or destroyed would the next annual growth of wood adhere to that bruised and discolored place like it does in other portions of the tree?

A. I think it would leave an interruption there not as smooth and nice *as* it would above or below the point.

page 661.] Q. How many years experience have you had in examining and blocking surveyors marks in timber?

A. Well ever since about 1854.

Q. Were you present with G. S. Stone when that slab was taken out of the poplar at the Muzzle corner (Indicating slab filed in this case)

A. I was there with Stone at the time he took the block out?

A. What season of the year was that block taken out?

A. I think it was in the winter time, either January or February.

Q. Looking again at the hacks in the poplar block from Knox Creek you may give your opinion whether the ax marks are too crude and prominent to be 100 years old?

A. I have took blocks out of poplar trees that was 100 years old that looked very much like them.

Q. Are they what are known among surveyors as ancient or very old marks?

A. Yes sir.

Q. Were you at the poplar tree on Knox Creek standing at the point designated on Stones Map by figure 7, and did you aid in taking out a block on the east side of that tree?

A. I was at that tree before it was blocked and was there when it was blocked. All the aid I done was looking on I *dident* do any of the chopping.

Q. Were the ax marks on that side of the tree what are known among surveyors as ancient or very old marks?

A. Yes sir.

Q. Did you at that time examine the block taken from the east side of that tree and did you find in any part of the block *andy* streaks or discolorations of any kind in the sap portion of it

A. I dont think I did find any streaks but I examined the block carefully.

page 662.] Q. If the ax with which the mark is made is sharp enough to make an incision in the bark, such as you

observe in the block taken from the Knox poplar and made when the sap is not flowing freely would you expect to find any results such as streaks or discolorations in the wood?

A. No I dont think you would find any discoloration in the wood where the ax was sharp and it was made at any time when the sap was not flowing freely

CROSS-EXAMINATION

By Judge Stiles.

Q. Would you expect to find discolorations in the wood made by marks made on a tree in the fall or winter, or would you expect to find them if the mark was *mde* in the *spring?x* that is at which season would the marking be most likely to produce colored streaks in the wood?

A. Well I would expect them to show plainer on timber where the marks was made in the spring when the sap was flowing as then the bark is not fast to the tree but is loose.

Q. You find a soft gelatinous substance between the bark and the wood, the function of which is to produce a new layer or annulation on the wood do you not?

A. Well when the sap first commences flowing it is apparently nothing but water but after a time it becomes thicker and thicker until after a time it makes a kind of a paste.

Q. Would not a blow upon the bark of a tree from an ax or such instrument or force sufficient to be felt in this sappy substance, tend to obstruct its flow and congest the sap and occasion fermentation at that point?

A. That would be true particularly if you used a blunt dull instrument.

Q. It would be true to some extent of whatever instrument was used, provided, the force of the blow extended to

page 663.] the wood of the tree or to the sap between it and the bark

A. That would be true provided the blow given was sufficient to produce fermentation in the sap.

Q. Any discoloration of the wood would be less likely to occur

from a mark or blow upon the tree inflicted in the fall or winter when the bark and wood are both comparatively dry of sap, would it not?

A. Yes I think it would, it is fermentation that produces that marks and nothing else, if there is nothing there to ferment it dont make the marks.

Q. You cannot form any definite idea whether a mark several years old was made with a sharp ax or a dull one from on *instec*tion of *t e* mark in the bark, can you?

A. No sir, unless it cut into the wood I dont think you could *tel* much about it. The effect of the weather on the bark would preclude your telling much about that.

Q. Which is more porous, the heart or the sap of the tree?

A. Well most of the wood the sap is more porous, that is the case with poplar, but poplar is a very peculiar wood for instance you can cut a tree down in the spring when it is green and saw it into lumber and pile it up on sticks and it will be perfectly clean and after it remains a short time it will be full of streaks and colors, particularly the sap portion of it.

Q. You speak of red and yellow streaks in the sap of this Knox Creek poplar block is not *he* red or pink more a general shading or *eclouding* extending well through all the sap *that* a mere streaking of the wood?

A. It is just the same thing as the black streaks, it is all produced by fermentation after the timber is cut. All that discoloration in the poplar block was produced by fermentation after the block was cut. You may cut it in the spring when it is perfectly clear and lay it away and it will come just like that.

page 664.] Q. These dark places at the square end of this block would be described as black specks rather than *bleak* streaks *streaks* would they not?

A. Yes they are what is generally called *milldew*.

Q. Do you discover at present any sign in the bark of the mark on this poplar block on Muzzle Corner?

A. No that part of the bark has been shelled off.

Q. When you took the block out of the east side of the Knox

Creek poplar did you look for discolored streaks in the sap as well as for ax cuts?

A. Yes sir, we looked for everything. We took the block and shaved it down smoothly with *and* ax and *and* made it *thiner* than it was and examined it carefully but did not find but two hacks in the bark, I dont think we found *and* discoloration or anything else in it, it was just the plain wood

Q. Would a slight discolored streak *and* inch and a *hal*, from the bark have attracted your attention at the time?

A. Yes I think it would.

And further this deponent saith not.

THO J. MATTHEWS.

2 days and 92 miles.

page 665.] J. L. THORNBURG, a witness introduced by the contesting defendants after being first duly sworn upon oath testified as follows.

EXAMINED

By Mr. Campbell.

Q. State your age, residence and occupation.

A. Age growing on 68 years, residence Huntington, West Virginia and by occupation Civil Engineer and surveyor and farmer.

Q. How many years experience have you had in land surveying

A. I think the first survey I ever made was in 1856 and I have been doing more or less surveying until I was taken sick, ever since. I was first taken sick in 1899.

Q. What ancient surveys *itf* any have you run upon?

A. The oldest survey that I have ever been upon the line of is known as the Savage Grant. That grant was made in 1772.

Q. Did you ever run upon any other surveys that were made shortly before or shortly after the year 1800?

A. Yes I have run some of the lines of the Hopkins survey and the Duval survey. I think the Hopkins survey was made before the year 1800.

Q. What experience if any have you had in examining old sur-

veyors marks for corners and line trees and blocking the same?

A. I have seen a great many of the old marked lines. I never did a great deal of blocking I believe I have only taken out two blocks.

Q. Please examine the marks in the bark of what we call the Knox Creek poplar block and say whether such marks are what are known among surveyors as ancient or very old marks?

Objected to by defendant King.

A. These *mrks* are the *usyal* marks on a line tree and look very old.

Q. Did you ever have any experience in clearing lands and in deadening timber in the different seasons of the year

page 666.] and did you ever work any in poplar timber?

A. Not very much. I have seen a good deal of poplar timber.

Q. Do you know from observation and experience the effect on the sap portion of a poplar to fell it in the month of April or May when the sap is rising?

A. No from my own experience, theoretically I have always been told that it was not the time to cut timber to last; it decays quickly.

Q. Open the Knox Creek poplar block and describe what you observe in the sap portion and supposing that this block was cut out in the latter part of April 1902 and since that time kept closely wrapped in cotton batting and oil cloth, what, in your opinion then, would be the cause of the discoloration observed in the sap, both the black and red streaks?

Objected to by defendant King.

A. These marks I think are very common in poplar lumber, the black and pink too. What is the cause of them exactly I cant say

Q. What did you find in the two blocks that you speak of having taken out of marked trees?

A. They were both beech trees. The first block I took out the ax had penetrated the wood a little and the cut of the ax remained in that wood and the growth coming over it. I think that was

taken out in 1856. It had been marked 43 years by the growths—counting the growths. The other one was one of the original corners of the Savage Grant. The heart of this beech tree was rotted out so that it was n[illegible]ssary to get a block out of it to chop the tree down. When it fell it split so as to leave the six marks in one piece, then we cut out that piece above the marks. On lifting up that piece it had decayed out to the original marking and showed plainly on the inside the six marks. From the external *appearence* of that tree, having the bark green on it, few persons could discover any mark upon it. I dont know just how many years that tree had been marked but it was marked before the *grpnt* was made. The block was taken out, I think in 1874 Just after the War of 1812 General Edmond Tupper made a resurvey of that grant and reported this corner as missing and marked a white oak for a corner.

page 667.]

CROSS-EXAMINATION

By Judge Stiles.

Q. But for some knowledge or information as to the location of the corner last mentioned would you have been able to identify the beech tree with certainty from its *appearence* as a marked corner tree?

A. That is the way I determined it was a corner from the external *appearence*. That together with running the line to it and another beech tree that was shown me by parties standing close to it, as having been decided upon as a corner by an old Pennsylvania surveyor The other beech tree *dident* help me in detemining that this was a corner. I should have said that there was another beech tree standing near there which had been decided upon as a corner by an old Pennsylvania surveyor. When I saw it, the other beech tree, I said that there had never been an ax struck in it.

Q. How near was the last mentioned beech tree to the one that you decided was the corner tree?

A. My course and distance run out at a point between the two trees and I think that they were about ten or fifteen feet either one of them from the end of the line run.

Q. I understand you that a good many other persons examining the beech corner tree failed to discover that it was marked as a corner?

A. At the time I made the survey there were a *numbr* of persons present and as I remember now I dont think there was one of them that could discern any mark.

Q. It is in fact quite difficult usually to discern marks in trees after the lapse of a *centuary* or thereabouts.

page 668.] A. Except to a well trained eye

Q. I hand you a piece of poplar wood and will *aske* you whether the break or mark *visable* in the bark would be taken for a very old mark?

A. If that is an ax mark it is old. I am not sure it is an ax mark.

The block examined by the witness and referred to in the last question and answer is marked for identification.

Q. How does it compare in apparent age with the marks, if they are marks on the poplar block you first examined—the Knox Creek block?

Objected to by the contesting defenndants because it is not shown or claimed that the marks on that block were made with an ax—the marks on block P were not made with an ax.

A. These marks on Knox Creek block are regular marks as they would appear on a line tree. On this block P there is only a single mark that I see, if marks at all, and as to age it would be very hard to determine which is the older.

Q. After the lapse of a good many years, forty or fifty *day* is it not very difficult to judge with any degree of certainty from the external *appearence* of the bark the actual age of marks or the relative age of marks with reference to each other?

A. It is. To aid a surveyor he would have to take into consideration the condition of the tree, the kind of bark that was on it and its exposure of the bark to the weather, more or less.

Q. Is not the only certain and reliable way to ascertain the age of a mark to block the tree and find some indication of the mark

in the wood beneath and count the annulations outward from that indication?

A. Where the wood has been hit with the ax and the block is taken out of a living tree usually you can count with some degree of accuracy the annual growths after the tree was

page 669.] marked and this is dependent upon as the correct method to determine the age of the mark. All other methods are guess work.

And further this deponent saith not.

1 day.

J. L. THORNBURG.

page 670.] N. L. REYNOLDS, a witness heretofore introduced by the contesting defendants, being again recalled by the same defendants, testified as follows:—

EXAMINED

By Mr. Campbell.

Q. Did you assist G. S. Stone in taking out of a tree what we call the "Knox Creek poplar block"?

A. Yes.

Q. Was the sap portion of that block as well as the sap portions of the other blocks or slabs taken out in obtaining that block sound and white and free from dote, decay or discolorations, at the time they were taken out?

A. I think they were.

Q. Please examine the sap portion of that block on the two sawed surfaces and give us your opinion as to whether any of the streaks or discolorations there observed were produced by either of the hack *mrks* in the bark and which did not penetrate to the wood?

A. I do not think they were.

CROSS EXAMINATION.

By Judge Stiles.

Q. Do you not often or some times find a dark streak in the

wood caused by a mark that penetrated the vital part of the bark althought it did not penetrate the wood?

A. Yes a bruise would produce a dark mark.

Q. That mark would in after years be found in about the same position where the hacks would appear in the wood if the ax had penetrated the wood would it not?

A. Yes.

Q. How long were you engaged altogether in the surveying you did on the Morris Grant in 1884?

A. Aoout six weeks.

RE-DIRECT EXAMINATION.

page 671. Q. In the case of a bruising of the sap as supposed in one of the cross questions would you find such a discoloration as you see disclosed in the Knox Creek block on the sawed surfaces or were those discolorations there disclosed a result of bruising the sap by any hack in the bark?

A. I do not think that any bruise that might have been produced on the wood would have resulted in the discoloration as manifested in the block, such a bruise would have confined the discoloration to a narrow streak.

Q. Would the streak in that case be as wide as the bruise was horizontally around the tree?

A. Yes.

RE-CROSS EXAMINATION.

Q. I direct your attention to the narrow black or dark streak in the block in question about an inch and a quarter from the bark, and underneath the hacks and ask if that is not such a dark streak as might be caused by the marks in the bark which do not penetrate the wood or by some similar bruising of the sap beneath the bark?

A. Yes it might have been produced by a bruise of the wood but in the block in question the dark streak seems to have moved too far up the tree to have been the result of the ax mark in the bark. In explaining that I might go further and say that any

bruise or mark in the wood never moves up the tree but produces its maximum effect directly where the injury occurs.

Q. Is the fact that the dark streak referred to in the Knox Creek block has moved too far along the block the reason why you think it was not made by the hacks in the bark?

A. Its maximum development has moved up from immediately beneath the ax mark, as a matter of fact it manifests very little of the discoloration under the ax mark and that is one reason for my conclusion.

page 672.] Q. Would you expect to find the discoloration in the wood caused by an injury to the bark which did not penetrate the wood as definite and *distince* in form and situation as a mark or discoloration caused by the actual penetration of the wood by the ax?

A. As far as its position is concerned it would be.

Q. Do you not often or some times find a stain or streak extending considerably beyond the mark where the ax has penetrated the wood, some times extending entirely between the marks?

A. Yes.

Q. Supposing this Knox Creek block to have been taken out in the spring and immediately wrapped up closely in cotton and oil cloth would that not tend to produce a *milldew* that would be visable in the form of discolorations in the sap that would show in connection with the discloration caused by a bruise to the tree by marking or otherwise during the life time of the tree?

A. Yes.

And further this deponent saith not.

N. L. Reynolds.

1 day and 78 miles.

page 673.] Feb. 11, 1903.

This day the attorneys filed a list of the defendants represented by J. H. Holt and C. W. Campbell, or by Sheppard & Goodykoontz, or by Edward C. Lyon or by all of them, which list of defendants is filed.

The conesting defendants also filed with commissioner a certified copy of *servey* and platt of the John W. Kettera, survey of *180,00*

acres, to the filing of which the defendant King objected and moved that the same be stricken out.

The defendant William H. Lawson in his own right and as trustee, filed with the commissioner the following certified copies of deeds.

Deed from Matilda E. Ferrell, to William H. Lawson, trustee, Dated 22 of May, 1900, for one huadred acres of mineral.

Deed from Henry Vance and wife to William H. Lawson, dated 17 of November, 1898, for sixty-five acres of mineral.

Deed from L. B. Sipples and wife, to William H. Lawson trustee, dated 22 day of May, 1900. For 156 1/10 acres of mineral.

Deed from Joseph Simpkins and wife to L. B. Sipple, dated 29 day of Sept. 1886 for 200 acres of land.

Deed from L. D. Chambers commissioner of school lands to Joseph Simpkins, dated 12 day of Feb. 1889.

Trust deed from Samuel Keneda to William Straton, dated the 20 day of October 1873.

Patent issued by Commonwealth of Virginia, dated 1st. day of Aug. 1851 to Samuel Keneda for 18 acres of land.

page 674.] Deed from James Hatfield and wife to William F. Canady dated March 20, 1885 for 25 acres of land.

Deed from William T. Kennada to Polly Ann Kennedy, dated on 30 day of November 1885 for 57 acres of land.

Deed from Polly ANN Kennedy to Matilda E. Ferrell. Dated the 8 day of May 1896 for 57 acres of land.

Deed from Alexander Trent to William T. Kennada dated the 8 day of January 1873, for 73 acres of land.

Deed from Ephraim Hatfield and wife to Smith Hatfield and Paterson Hatfield dated 19 day of February 1878 for 100 acres of land.

Patent of Commonwealth of Virginia to Ephraim Hatfield dated the 25 day of February 1836 for 215 acres of land.

Agreement between William T. Kenada and John Mounts concerning the partition of 36 acres of land.

Deed from William Straton trustee to Joseph Simpkins dated 2 day of June 1884.

Petition of L. D. Chambers commissioner of school lands for Logan County for sale of tract number 240.

Report of J. A. Bing commissioner of the circuit court of Logan County in the matter of school lands.

Annual report of L. D. Chambers Commissioner of school lands for Logan County.

Decree of circuit court of Logan County filing report of L. D. Chambers commissioner of school lands.

Order appointing L. D. Chambers commissioner of school lands for Logan County.

page 675.] The contesting defendants announced that they had a witness in the City of Pittsburg whose testimony they desire to take and also wish to take the testimony of some witness's in the City of New York and the nature of such testimony being explained to the defendant King it was agreed between the parties that the said testimony of the contesting defendants might be taken at any time before the report of the commissioner herein.

With the afore said understanding, and none of the parties to this cause having any further evidence to introduce before the commissioner upon the question of location it is ordered by the commissioner that the depositions and further taking of evidence in this cause upon the said question of location, be, closed.

The parties signifying that they desired to argue the matter before the commissioner, by consent the 2nd. day of March 1903, is fixed as the day to hear arguments in this cause.

Given under my hand this the 11th. day of February 1903.

J. T. Graham,

Commissioner.

page 676.] Met this the 21st. day of February 1903, at the law office of Frank C. Osburn, in the city of Pittsburg, Pennsylvania, in behalf of the contesting defendants for the purpose of *takint* the testimony of the witnesses mentioned by contesting defendants on February 11th, 1903.

Present: W. P. Hubbard, *attouney* for the contesting defendants.

No one appearing for the defendant H. C. King but he consents to the taking of the following *defositions* so far as the time, place and notice is concerned, and has filed with the commissioner questions to be propounded the *witneses* upon cross examination in his behalf.

SAMUEL COLLINS, a witness introduced by the contesting defendants after being first duly sworn upon oath testified as follows.

EXAMINED

By Mr. Hubbard.

Q. State your age, residence and occupation?

A. Age I am 81 years past, residence Allegheny City, Pa. and am a minister of the Gospel:

Q. Are you one of the executors of William Reed deed?

A. Yes sir.

Q. As such did you make sale of claim to 500,000 acres of land in West Virginia?

A. A claim to the undivided three fourth to the said 500,000 acres of land in West Virginia.

Q. Please state that transaction in your own way?

A. The business was transacted through Willis B. Smith of Richmond Virginia and completed by deed of Bank of Commerce of Pittsburg, Pa. to D. W. Armstrong of New York The contract price was $6000.00/ We received on that $4666.66 in cash and two bonds of Monterey & Gulf Rail road of Mexico at the face value of $1000.00 each which we took at $1333.34—for the

page 677.] two. Which bonds we have yet.

Q. Was that the original agreement as to the method of payment?

A. The original agreement was to be $6000.00 cash but Mr. Smith informed us that his client could not raise the $6000.00 but

could raise the $4666.66 in cash and turn over the two bond as the balance of the consideration.

Q. Who was Mr. Smith's client if you know?

A. We learned that only when the deed came to be made it was Mr. Armstrong.

Q. How did the bank come to convey this title which belonged to Mr. Reed's estate?

A. Mr. Reed had deeded to the bank as security for money borrowed. And the debt being paid they made the deed direct.

Q. At what time did you get these bonds?

A. August 1893.

Q. If you ever ascertained the value of the bonds at that time and since please state what the value was and the sources of your information?

A. I corresponded with Coudert and Coe of New York, Bankers, who could give me no quotations I have since enquired of bankers and brokers in Pittsburg who could give me no quotations but was informed that they were likely to become somewhat valuable.

Q. When were these *inquireys* made in Pittsburg?

A. Within two years.

Q. And what *inquireys* other than to Coudert and Coe did you make shortly after receiving the bonds?

A. I dont know that I made any. I inquired of persons that I thought might know but always got the same

[page 678.] answer—that they *dident* know.

Q. Where were these persons of whom you made these *inquirys* shortly after you got the bonds?

A. In Pittsburg.

Q. Do you remember how you came to make *enquirey* of Coudert and Coe?

A. I was referred to them as a party probably knowing more about it than any body else.

Q. Were you making these *enquirys* with a view of a possible sale of these bonds by the executors?

A. Yes sir.

Q. According to all the information you have been able to get what is the fact as to these bonds ever having been salable or had a market?

A. I know nothing about that. I dont know that they ever had a market.

Q. Were you ever able to ascertain if there was a market for them with all the *inquirys* that you made?

A. I was not. I only inferred that there had been a market from the fact that they were in the hands of Armstrong

Q. Who were and are your coexecutors?

A. Frank C. Osburn, W. W. Scott, at that time and are still my co executors.

Q. Which of the Executors had more immediate charge of this transaction

A. I suppose myself in consultation with Mr. Osburn. I conducted all the correspondence

The defendant King moves to strike out all of the foregoing testimony of the witness and not waiving his rights under said motion *proceded* to cross examine the witness as follows upon the interrogatories as follows.

page 679.] Q. Did the brokers to whom you submitted the bonds for sale quote you any price for the bonds, or did they give you any reasons why the bonds were not salable or did they inform you as to the names of parties to whom they offered the bonds, if so please state price, reasons assigned and names of parties?

A. To each of those queries I would say, no.

Q. Is it not a fact that the quotations for Railroad bonds at that time that were listed on the New York Stock Exchange were no proper criterion as to their real value owing to the money panic then prevailing?

A. That is and was my impression but I have no positive information on the subject

Q. Is it not a fact that at that time, towit, shortly after you received these bonds from Armstrong, there was hardly any sale for railroad bonds of any roads that were not listed and that had

not been earning interest for a considerable time and was not the fact that they were unsalable no *criterion* as to their real values?

A. I do not know that the bonds came from Armstrong, they *they* were said to come from him.

My Impression is as suggested by the question that *is* was no criterion of the real value, hence we retained the bonds or kept them as they would probably be of value at some time.

Q. Are you aware that the Monterey and *Mixican* Gulf Road was at the time you offered these bonds for sale going through some kind of a financial reorganization by the Societe
page 689.] Geaeral of France, in which certificates were beiag issued by the company?

A. Some one informed me to that effect but I know nothing positive or definite of it.

Q. Are you aware that the Mexican Central Railroad of *Mixico* has purchased the Monterey and Mexican Gulf Rail road, paying the holders of the bonds or certificates at the rate of thirty nine cents or forty nine cents on the par *vale* of the same?

A. I have an impression to that effect but have no definite information on it. I received that *ispresion* from an item in the newspapers. I then inquired from a real estate agent here who promised to get me the information, but has not yet given me any.

Q. Did you refuse to go into the reorganization plan proposed by the Societe General?

A. I did not.

RE EXAMINATION

Q. What was the extent or nature of the news paper item that you say you saw?

A. It was very brief and I have a very imperfect recollection of the wording.

Q. What did it say about the price *or* thirty nine cents or forty nine cents or whether that was payable in money or in some stocks or securities.

A. I have no recollection of ever seeing or hearing anything of the terms of the transaction.

Q. When and by whom were you informed about the financial, reorganization by the Societe Generale of France?

A. I think the information came from Mr. Coudert himself and I think George B. Hill & Co. brokers of Pitts-
page 681.] burg said something to the same effect at a later date. I wrote to Coudert at a later date than my first *inquirey* of him and I think it was then he gave me the impres-*ion* that they were reorganizing. It was a very indefinite statement that he made.

And further this deponent saith not.

SAMUEL COLLINS.

page 682.] FRANK C. OSBURN, another witness introduced by the contesting defendants after being first duly sworn upon oath testified as follows

Q. State your age, residence and occupation and your relations with the estate of William Reed deceased?

A. Age 48 years, residence Sewickley, Pennsylvania, and am an attorney at law, with office in Pittsburgh, Pa. I am one of the executors of the estate of William Reed

Q. Have you been present during the testimony of Samuel Collins?

A. I have. I know of the transaction to which he *referes* to in his testimony.

Q. If you ever learned anything as to the value of the two bonds of the Monterey and Mexican Gulf Railway which came into the hands of the Executors of Mr. Reed in that *transactio* you will please state what the values were and the sources of your information?

A. When we received those bonds my naderstanding was *the* had no market value and were purely speculative securities. We accepted them for $1333.34, without any knowledge whatever that they were worth this sum or any part thereof, but in taking in accepting them my idea was, we were doing the best, if not the

only thing we could do under the circumstances. The parties who gave us the bonds assured us they had some value but I have no recollection that he fixed any price at which they could be sold, either in or outside of any market.

Q. What efforts did the executors make to sell these bonds and with what result?

A. My recollection is we made very full *inquirey*. At the time we received these bonds, of brokers and other parties
page 683.] in New York and In Pittsburg, as to the fact whether they were salable or not and that our advice was that they were unsalable at that time. I made none of these *inquireys* myself but urged Samuel Collins to attend to the matter. I have no knowledge of the number of parties he saw in the places referred to but I am satisfied he gave the matter carefnl *atention* and his advice to myself, as his *collegue* was, that the bonds were unsalable at that time, at least for any sum that we would be justified as executors in selling the same for. We never were advised that they could be sold for a ten cent piece, but they might have been sold at a nominal price, say fifty or one hundred dollars, but so far as I am concerned I would not have been willing to part with them for any consideration of this sort. Since then I have urged Mr. Collins to make inquiry about these bonds and he has reported to me that he has done so and that they were not salable. This I have done on several occasions. We never heard anything about this matter of 39 cents or 10 cents being paid on the bonds.

The defendant King here moves to strike out the whole of the foregoing testimony of the witness.

CROSS EXAMINATION

A. I have read the Cross Interrogatories propounded to Samuel Collins by the defendant King and will say that I know nothing about the same except probable, as to some matters of opinion that are asked for therein in regard to the market value of *bonds* in the New York Stock Exchange I think that in such times bonds *couldent* have been sold for a very high price but if they were

worth anything could have been sold for some price. As to the other matters referred to therein I know absolutely nothing.

page 684.] RE EXAMINATION

Q. If the two bonds which have been mentioned are in the possession of the executors will you please produce them?

A. I do produce them, and while of course, we could not part with the bonds I am willing that copies shall be made by the commissioner and if the production of the bonds should hereafter be desired and while they are in our possession we will produce them, at any time and place desired, for inspection. These bonds still bear the coupons maturing November 1st. 1893 up to November 1st. 1938.

Copies of these two bonds and of the words stamped upon the face of them are duly certified by the commissioner, are filed herewith and made a part of the witnesses deposition marked A and B.

Q. If the envelope in which these bonds were when produced here bears any memorandum, please state what it is?

A. The envelope does bear the following memorandum. "Mexican Bonds". "No sale for them" "5/15 1901" This memorandum is in the handwriting of my *colleque* Samuel Collins.

And further this *depojent* saith not.

FRANK C. OSBURN.

page 685.] Met this 24th day of February, 1903, at the Banking house of Kountze Brothers, 120 Broadway, in the City of New York, for the purpose of taking the testimony agreed upon by the parties on the 11th of February, 1903.

Present:

J. T. GRAHAM, ESQ., Commissioner.

C. W. CAMPBELL, ESQ.,

E. C. LYON, ESQ., Attorneys for contesting defendant.

V. A. WILDER, ESQ., appearing for defendant Henry C. King.

The witness of the contesting defendants not appearing to tes-

tify, on motion of the contesting defendants these proceedings are adjourned until to-morrow, February 25th, at 10:30 A. M.

J. T. GRAHAM,
Commissioner.

page 686.] Met this 25th day of February, 1903, at 10:30 A. M., at the office of Messrs. Kountze Brothers, Bankers, 120 Broadway, City of New York, and the witness for the contesting defendants still not being present, the proceedings were adjourned until 2 o'clock in the afternoon at the office of William M. Coler, Jr., at which time and place the parties me for the purpose of taking depositions.

Present:

J. T. GRAHAM, ESQ., Commissioner.

C. W. CAMPBELL, ESQ.,

E. C. LYON, ESQ., Attorneys for contesting defendant.

V. A. WILDER, ESQ., appearing for defendant Henry C. King.

WILLIAM N. COLER, JR., a witness introduced by the contesting defendants, after being first duly sworn, on oath testifies as follows:

DIRECT EXAMINATION

By Mr. Lyon:

Q. Where do you reside?

A. 23 Central Avenue, Newark, New Jersey.

Q. Were you engaged in the banking and brokerage business in the City of New York, and if so, please state the name of your firm and the number of years that you were engaged in such business?

A. I was engaged in th banking and brokerage business in New York for some twenty-five years, prior to 1898, when I retired from active business. The firm was William N. Coler &

page 687.] Company.

Q. Was one of the members of your firm a member of the New York Stock Exchange?

A. Yes, during part of the time, during the earlier years it was not so, but for the portion of the time.

Q. The latter portion?

A. Yes, the latter portion of the time.

Q. Did you transact an extensive business in railroad bonds and other securities?

A. We did a large business in general investment securities, railway and others, both current and uncurrent.

Q. Were the Monterey and Mexican Gulf Railway first mortgage bonds ever listed on the New York Stock Exchange?

A. They were not. I think that is correct. I had that looked up.

Q. Do you know of their being listed on any other stock exchange in the United States?

A. I have no knowledge other than of New York.

Q. Had these bonds any market value in the year 1893?

A. In the year 1893 this road was in default and in the hands of a receiver, and these bonds had no current market value:

Mr. Wilder: for the defendant Kiag—I object; it should be shown first that the witness is competent to testify.

Q. Do you know of any reorganization scheme to reorganize this company, and if so, please state what it was, as near as you can tell?

A. The company was reorganized, my remembrance is, about the year 1895, 1896. The exact terms of that reor-
page 688.] ganization I do not at present recall, but it involved the exchange of old Monterey and Mexican Gulf Railway bonds for stock in the company formed in Belgium.

Q. What is the name of that company as near as you can recollect it?

A. The name of that company was the Compagnie Belge de Chemin de Fer en Amerique.

Q. In this exchange at what rate were the Monterey and Mexican Gulf Railway bonds taken by this Belgian Company?

A. I don't remember that.

Q. Did I understand you to say that they exchanged certificates for the bonds?

A. They gave capital stock for bonds.

Q. Up to the time you retired from business, in 1898, at what rate were these certificates of the Belgian Company selling for?

A. They sold all the way from ten to twenty per cent.

Q. Twenty cents on the dollar?

A. Yes, twenty per cent.

Q. You don't mean twenty per cent premium?

A. No, at twenty per cent of their face value.

Q. Do you know of the banking house of Messrs. Seligman & Company having any standing offer for these bonds and if so, state what it was?

A. The firm of Seligman & Company—

Q. I mean for these certificates.

A. As Seligman & Company during the latter time of the existence of these certificates and before they were

page 689.] acquired by the Mexican Central paid about fifteen to eighteen per cent for them.

CROSS EXAMINATION

By Mr. Wilder.

Mr. Wilder: I move to strike out all the testimony given by the witness as incompetent and irrelevant, and I object to each question and each answer.

Q. You say you were in the banking business in 1898?

A. I was in the banking business up to November, 1898.

Q. How was your house rated in the books of Dunn and Bradstreet?

Mr. Lyon: I object to the question.

Q. Did you ever have any rating at all?

A. We did.

Q. How much was it?

A. My remembrance is that we were rated at from seven hundred and fifty thousand to one million dollars. A proper reference to the books will show.

Q. How long was your partner a member of the Stock Exchange?

A. I don't remember the exact date, but for a number of years.

Q. Did you ever know of the Monterey and Mexican Gulf Railway bonds, and did you deal in them?

A. Yes.

Q. How many?

A. Many of them at different times, buying and selling; the exact amount of the orders I do not recall.

Q. Who did you buy them from?

page 699.] A. Various parties.

Q. Name them.

A. I could not at this length of time.

Q. Name one.

A. J. Alden Gaylord.

Q. How many did you handle with him?

A. I couldn't recall the number.

Q. Was it more than one?

A. I couldn't tell how many.

Q. Was it more than five?

A. Twenty or twenty-five.

Q. What were the numbers of these bonds?

A. I couldn't say.

Q. Didn't you keep a record?

A. My firm kept a record of these transactions on their "ticklers."

Q. Who did you buy them from?

A. Mr. Gaylord.

Q. Who is he?

A. A broker, J. Alden Gaylord.

Q. What did you pay him for them?

A. I bought bonds from him at different times at different prices. After the lapse of about ten years I could not give you the exact figures.

Q. Did you buy any from anyone else?

A. Oh yes from a number of different people.

Q. Can't you name them?

A. Not at this time.

Q. To whom did you sell them?

page 691.] A. I couldn't say that; I sold millions and millions of bonds. I bought these bonds at various times from various people at prices ranging from forty or fifty down to eight or ten. I bought these bonds many times on orders; other times thinking they were cheap I bought and sold them. I am referring now to bonds of the Monterey and Mexican Gulf Railway, not the Belgian certificates.

Q. In what years did you buy these bonds?

A. In the years 1891 to 95 or 96.

Q. Don't you know there were no bonds out then, to speak of, in circulation?

A. I don't know any such thing.

Q. Don't you know that after 1893 all the bonds were taken up either by selling them or by the Societe Generale?

A. I have no knowledge of the Societe Generale whatever. I know this, that I dealt in bonds until the Belgian certificates came out; speaking after a lapse of several years there might have been in interval between them, but my impression is that there was not, but I cannot say positively.

Q. Did you ever see any of the certificates of the Societe Generale?

A. No, I have no knowledge whatever of the Societe's certificates.

Q. Can you tell me the names of the certificate buyers?

A. No sir, it was ten years ago, I had been in business and did a business *if* a great many thousands.

Q. Do you know what rates of interest the Monterey bonds were to pay?

page 692.] A. I do not remember the rate of interest on the Monterey and Mexican Gulf bonds; my remembrance of it is that they were five per cent bonds.

Q. Do you remember whether they were in five hundred or one-thousand denominations?

A. I don't remember the denomination; my clerks handled the bonds.

Q. Do you know how many bonds were issued per mile?

A. I do not. I can't tell you how many bonds to the mile the Chicago Northwestern issued, and I have sold millions of them.

Q. You couldn't have sold them for less than fifteen and made anything out of them? You couldn't have sold them at fifteen or twenty and made anything, you had to sell them for more than that, didn't you?

A. I have testified to the prices and these prices were what I purchased them at; I did not sell them at a loss.

Q. You state that Seligman & Company was offering for them fifteen cents?

A. I mean for the certificates.

Q. The certificates were not worth as much as bonds, were they?

A. I should say they were worth more than the bonds.

Q. Why?

A. Because one was defaulted bonds in process of reorganization, the other was a new reorganized security.

Q. Did the new security have any better security; the certificates?

A. I don't know as to the exact security against their issue but a security issued upon a completed reorganization is *is*

page 693.] always better and sells better than a bond in default.

Q. Don't you know this was not a reorganization at all?

A. I don't know the details of the reorganization, or so-called reorganization, it was certainly known in New York as a reorganization.

Q. What rate of interest did the certificates bear?

A. They bore such rate as was declared by the company, they were really stock certificates, as we understood it.

Q. That is, they bore no interest at all? is that so?

A. As testified to above, my remembrance is that they were stock certificates, and bore only such interest or paid such dividends as the Board of Directors declared from time to time.

Q. And you say that such certificates bearing no absolute rate of interest, entirely at the mercy of the board of directors as to interest or dividends, were worth more than bonds that you might foreclose on?

A. I do.

Q. And you have been in the banking business so many years?

A. I have.

Q. What profit would you make on such a transaction as that, buying and selling them, what would you make as a profit on such a risk as that?

A. I don't remember the general profit, it was small, but I do remember that on the last transaction I made in the certificates I bought and sold them on my own account and made about one and three quarter per cent on them.

Q. How early did you sell Monterey and Mexican Gulf Railway bonds, what year?

page 694.] A. I couldn't fix the year; it was at a time when we were getting same in connection with the Western National Bank.

Q. Did the Western National Bank loan Bullock & Wilder money on these bonds?

A. Yes.

Q. About what date?

A. About 1892.

Q. You mean 1892?

A. Yes, I mean 1892, I couldn't fix the exact date, it is too far back.

Q. Don't you know the Western National Bank loaned on these bonds before 1892, and that the loan was all paid up in 1892?

A. They sold the bonds out in 1892.

Q. Don't you know the Western National sold no bonds out?

A. They sold some out at auction.

Q. The Western National Bank?

A. Yes.

Q. Don't you know that there was only one lot sold, and that was at the Holland Trust Company?

A. No.

Q. Don't you know that Bullock & Wilder paid up their loans and the interest guaranteed by these bonds?

A. No, I do not.

Q. And you were a director of the bank?

A. I was a director of the bank for many years, but am not familiar with every transaction that went through their books.

Q. But you seem familiar with their bonds, you
page 695.] know more about them than I do.

A. You have my testimony on this point.

Q. Don't you know that the Western National Bank never had a claim against Bullock & Wilder that was not paid?

A. My remembrance is that the bank had claims against Bullock and Wilder upon which they had to sell out Monterey and Mexican Gulf bonds and other securities.

Q. You never dealt in the certificates, did you?

A. The Belgian certificates? I bought and sold Belgian certificates at different times.

Q. Did you ever see any of them?

A. Yes, certainly.

Q. What were they like; what number of shares were in each certificate?

A. My remembrance is that they were for five thousand francs each, practically a thousand dollars each.

Q. I suppose you could have sold half a million of these bonds in the neighborhood of twenty—at that time, if you had had them, could you?

A. At what time?

Q. The time you were dealing in them.

A. I do not believe half a million dollars in these bonds could have been sold at any time at any price.

Q. But you say Seligman & Company was offering fifteen or twenty?

A. I said Seligman & Company was offering fifteen or twenty for the Belgian certificates. I never had and knowledge of his making any offers for the old Monterey and Mexican Gulf bonds. He might have done so, but I have no knowledge of it.

page 696.]

Q. Don't you know he would have taken the bonds as soon as the certificates?

A. No, I don't know anything about it.

Q. Seligman & Company generally make pretty good profits when they buy anything, don't they?

A. They have the reputation of being good bankers—excellent bankers.

Q. All bonds were selling quite low at that time, all railway bonds, were they not?

A. At what time?

Q. 1893?

A. During the summer and fall of 1893 the markets were depressed; after January, 1894, they were about the ordinary market.

Q. Was there anything in this country quite equal to the crash of 1893 and lasting so long?

A. In my judgment, other crashes have lasted much longer, but none have been more severe.

Q. That lasted long enough, didn't it?

A. Long enough for me.

Q. Wasn't it almost impossible to sell a bond on an unfinished road at that time, that bond having failed to pay the interest?

A. The market was certainly very bad.

Q. Do you know what Toledo and Ann Arbor bonds were worth in 1893?

A. I don't recall.

Q. Do you know what they were selling at prior to that?

A. No.

page 697.] Q. Do you know what Mexican Central 4's sold at prior to that?

A. I have an impression, but no real recollection.

Q. Do you know what they were selling at in 1893?

A. My remembrance is about 65.

Q. Don't you know they went to 30?

A. I have no recollection of their going as low as that.

Q. You don't think that they got to 30?

A. It is impossible for me to reply without looking at the Stock Exchange lists, which will show what the various bonds sold at at the various times asked for.

Q. I suppose Seligman & Company, if they bought at eighteen or twenty would expect to make ten per cent on that, wouldn't they?

Mr. Lyon: I object; he is not supposed to know what Seligman & Company's profits would be.

A. I do not know Messrs. Seligman's affairs.

Q. In all this time you were buying and selling Monterey & Mexican Gulf bonds did you get acquainted with Wilder, the treasurer of the road?

A. I never met Mr. Wilder to my knowledge.

Q. Don't you know that Bullock & Wilder had every bond of that road under their personal charge and none of them were on the street other than in banks where they were borrowed on, and that these two men owned the whole thing, stock and everything?

A. I have no knowledge whatever in connection with that matter.

page 698.] Q. Doesn't it seem strange to you, that being a fact, and you dealing in Monterey and Mexican Gulf bonds, that you never became acquainted with him, the treasurer of the road who personally handled every bond?

A. It does not. If I get an order to buy I do not go to the treasurer of the road to ask about

Q. Did you ever confer with Seligman about it?

A. I don't remember conferring with him about the bonds, I did ask him about the certificates at various times.

Q. Don't you know that the road was sold out to the Mexican Central?

A. I was so informed.

Q. About what did they pay?

A. My impression is it was nineteen hundred and fifty francs.

Q. That would be how much on the ordinary exchange?

A. I think it figured about thirtyseven and a half.

Q. Wouldn't it figure thirty-nine or forty?

A. I don't know exactly what it would figure out now, perhaps that with the dividend on.

Q. Don't you know that for all the back coupons, certificates or unpaid coupons—certificates were issued at the same rate as were issued for the bonds?

A. As previously testified to, I have no knowledge as to the rate of exchange between the old bonds and the new certificates.

RE-DIRECT EXAMINATION

By Mr. Lyon.

Q. When did the Mexican Central purchase the Monterey and Mexican Gulf Railway; about what year?

page 699.] A. In 1900; wasn't it; my remembrance is 1900.

Mr. Wilder: On behalf of the defendant King I move that the direct examination of the witness be stricken out. I object to every question and every answer, and move that both question and answer—in fact the whole direct examination be stricken out.

WILLIAM N. COLER, JR.

Thereupon the parties re-umed the taking of depositions at the Banking house of Kountze Brothers, 120 Broadway, in the City of New York, this 25th day of February, 1903, at 3 o'clock P. M.

Present:

J. T. GRAHAM, ESQ., Commissioner.

C. W. CAMPBELL, ESQ.,

E. C. LYONS, ESQ., Attorneys for the contesting defendant.

V. A. WILDER, ESQ., Appearing for Defendant Henry C. King.

LUTHER KOUNTZE, having been requested by the defendant King to appear upon the witness stand, after being duly sworn, upon oath testifies as follows:

EXAMINED

By Mr. V. A. Wilder.

Q. You have obtained quite a large quantity of land in Mingo County, W. Virginia?

A. I have an interest in some land there.

Q. A considerable portion of it conflicts with what is known as King's Survey or Morris's Survey?

A. I understand that the owners of the patent claim that it overlays some of their lands.

page 700.] Q. Is your firm owner, or do you own it personally?

A. The great bulk of it—the interest is personal, but there are about twenty—or, I suppose, thirty persons, in all, interested in it; roughly speaking twenty or thirty people are interested.

Q. When did you buy most of the land, Mr. Kountze?

A. I think the purchase began about twelve years ago and continued for several years.

Q. You believed you were getting a good title to these lands, did you not?

A. Yes.

Q. When you bought it you had no idea of having to fight for it, contesting for it in litigation, did you?

A. No.

Q. On the average, what did you pay for the land?

A. I don't remember.

Q. Twenty-five cents an acre?

A. I think it was considerably more.

Q. Mr. Campbell of Campbell, Holt & Campbell?

A. Yes.

Q. Mr. Sheppard?

A. Yes.

Q. Brown, Jackson & Matthew?

A. That I don't know.

Q. Judge Duke?

A. Yes.

Q. Judge Duke represented you and these interests for the last ten or twelve years, I believe?

A. He was to some extent my attorney.

Q. Did you employ Mr. Claude Gaujot?

A. To some extent, I think.

Q. In surveying and attending to your lands there?

A. To some extent.

Q. You have made settlements with him for his labor, haven't you?

A. Not I, personally, no.

Q. The settlement was made through his father, was it?

A. I think so.

Q. Did you ever employ any lawyer in Virginia other than Judge Duke, or cause any other lawyer to be employed for you?

A. The gentlemen you have named have been employed.

Q. I mean any attorney in Virginia?

A. I don't recall now.

Q. Do you recall any lawyer in *Buchanan* County that you have employed?

page 704.] A. No.

Q. Any employments of that sort were not usually made by you, were they?

A. No.

Q. Do you know whether anyone employed anybody in *Buchanan* County for you?

A. I don't know.

Q. You never paid any bills, did you?

A. I don't attend to these details.

Q. Do you know how long Campbell, Holt and Campbell have represented you there?

A. I don't recall that.

Q. You have been very active in the last few years in fighting King, have you not? that is, the interests you are with?

A. I think not?

Q. Mr. Lyon has been in your employ, has he not?

A. Yes.

Q. He has ben down there almost constantly the past year?

A. A good deal, but not constantly.

Q. You have been very active in fighting the King suit?

A. I should not put it that way—but somewhat active in protecting ourselves.

Q. Was it by your advice that we were brought up here to take testimony—by your personal advice?

A. No.

Q. It was your attorneys down there that advised it?

A. If any advice was given I assume it was by them; it was not by me.

page 705.] And further this deponent saith not.

LUTHER KOUNTZE.

After reading my testimony, I desire to state that some of this property was purchased over twelve years ago, as early as 1888. The deeds will show. Whilst we had options for some mineral rights at fifty cents to one dollar an acre, we availed ourselves of only a portion of the options, and, in some cases were obliged to pay more than the contract price in order to get the deeds. A large amount of the property cost one, two, three five, up to ten dollars an acre, on all of which we have paid the taxes from the times of purchase up to this date.

LUTHER KOUNTZE.

Huntington, W. Va., March 2, 1903.

This day V. A. Wilder representing the defendant H. C. King appeared before the commissioner and moved that the foregoing

statement of the witness Luther Kountze appended to his deposition be stricken out as the same was not made before the Commissioner or with the knowledge of the defendant King, and further moved the Commissioner to certify on the record the facts relating to said alleged statement.

The Commissioner therefore certifies that the deposition of the witness Luther Kountze was taken before him at the time and *place* mentioned in the caption, by a stenographer who was directed to extend the same and have the witness sign it and then send the said deposition to the Commissioner. That immediately upon taking said deposition of the said Kountze, Commissioner left for his home in West Virginia. That on this the 2nd. day of March, 1903 Commissioner received the deposition from said stenographer to which is appended the said statement of the witness Kountze. That said statement was not given before the Commissioner during his proceedings and Commissioner had no knowledge of same until he received the deposition of the witness from the stenographer as aforesaid.

Given under my hand this the 2nd. day of March, 1903.

J. T. GRAHAM,
Commissioner.

page 706.] I, R. B. Parrish, Clerk of the Circuit Court of Marion county, West Virginia, do certify that the foregoing volume is a correct copy of the depositions taken on behalf of the "Contesting defendants" before Commissioner John T. Graham, in the Chancery cause of State of West Virginia vs. Henry C. King, et als., and returned, with other evidence, by said Commissioner with his report, being one of the volumes of deposition of the record of said cause containing the report of said Commissioner and certain pleadings, decrees and other pleadings therein.

Given under my hand this the 7th day of November, 1907.

R. B. PARRISH, *Clerk.*

(Printed March 18, 1908.)

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TESTIMONY OF THE DEFENDANT, HENRY C. KING.

State of West Virginia

vs.) *In Chancery.*

Henry C. King and Others.

Testimony taken in the above styled cause before J. T. Graham, Commissioner in Chancery, in behalf of the defendant Henry C. King, upon the question of the location of the Morris Grant.

Welch, West Virginia, July, 3 1902.

Commenced proceedings this day in behalf of the defendant, Henry C. King.

PRESENT: C. W. Campbell, John A. Sheppard and Edward C. Lyon, attorneys for contesting defendants.

JUDGE M. F. STILES,
Attorney for the defendant, Henry C. King.

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IV and V, its draft, be embodied in the decree for reasons which will be apparent on reading those paragraphs.

The serious objections to the defendant's draft of decree

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deem desirable of the books of account, documents, and public records of either State relating to the inquiries he is directed to make, and to cause copies thereof or extracts therefrom to be made for use in making up his report.

All published records published by authority of the Commonwealth of Virginia prior to the creation of the State of West Virginia and all papers and documents and other matter constituting parts of the public files and records of Virginia prior to the partition of her territory which, in the judgment of the master, may be relevant and pertinent to any of said inquiries, or copies thereof, if duly authenticated, may be used in evidence and considered by the master. The public acts and records of the two States since the creation of the State of West Virginia shall be evidence if pertinent and duly authenticated; but all such testimony tendered by either party shall be subject to proper legal exception as to its competency.

The master is empowered to summon any persons whose testimony he or either party may deem to be material, and to cause their depositions to be taken before him or by a notary public or other officer authorized to take the same, after reasonable notice to the adverse party.

(2) The master is authorized and empowered to employ such accountants, stenographers, or other clerical assistance as he may find it desirable to employ, and to secure such rooms or offices as he may require, in order to the prompt and efficient execution of this order of reference, and to agree with such accountants and stenographers, typewriters, and the owner of such room or rooms for such compensation to be made to them as the master may consider reasonable and just. He is authorized to direct their compensation to be paid out of the funds to be deposited to the credit of this cause.

(3) The complainant will cause the sum of three thousand dollars to be deposited with the marshal of this court to the credit of this cause, on account of the costs and expenses of executing this decree and of this suit, and the complainant will cause such further sums as may be necessary to defray the costs and expenses of executing this decree to be from time to time in like manner deposited with said marshal. In the event that the defendant shall desire any special statement or accounts to be made, she shall in like manner, before the taking of any such account or the making of such special statement, cause the sum of —— dollars to be deposited with the marshal.

And the master is authorized from time to time to draw upon the funds so deposited by Virginia for the compensation of the accountants and other clerical assistants whom he may employ, and for any other costs or expenses, including stationery, printing, and room rent, which it may in his judgment be necessary to be incurred in promptly and efficiently executing this order of reference or making up any special statement or accounts asked for by the plaintiff, and the same will be charged up as part of the complainant's

are particularly to par. II, but also to pars. III, IV and V thereof.

Complainant's draft directs the master to take an account ascertaining:

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costs; and he will draw upon the fund deposited by the defendant for any costs which may be incurred in making up any special statement or accounts which may be desired by the defendant to be specially stated, which drafts, accompanied by proper vouchers, the marshal of this court will pay, and the same will be charged up as part of the defendant's costs in the cause.

And the said marshal is allowed to have and retain a commission of five per centum for his services in receiving and disbursing the funds so deposited with him, and he will make a report of his transactions, receipts, and disbursements in the premises to the court.

IV.

The first notice of the time and place fixed by the master for beginning the taking of the accounts directed by this decree shall be given at least thirty days before the date fixed by him therefor, provided that the date so fixed by the master for beginning the taking of said accounts shall not be a day earlier than February 20, 1907. The master may adjourn his sittings from time to time and place to place without notice to the parties. He will cause to be kept, in a minute book to be provided for the purpose, a journal or minutes of his sittings in the execution of this decree, showing the counsel present, if any, any adjournments which may be taken by him from time to time or place to place, and any other matters which the master may deem it proper to mention therein, which minute book or journal he will return with his report.

V.

Any notices to be given in connection with the execution of this decree may be given to the Attorneys-General of the respective States.

Defendant's draft of decree referring the cause to a master.

This cause came on this day to be heard upon the complainant's bill and the exhibits filed therewith; the answer of the defendant, with the exhibits filed therewith; the general replication thereto by the complainant, and was argued by counsel, and on consideration of which it is adjudged, ordered, and decreed that this cause be, and the same is hereby, referred to —— ——, who is appointed a special master herein, who, after giving — days' notice to the parties of the times and places fixed by him, from time to time, for executing this decree, will ascertain and report to the court:

I.

The amount of the public debt of the Commonwealth of Virginia on the first day of January, 1861, stating specifically how and in what form the

"The amount of the public debt of the Commonwealth of Virginia as of the first day of January, 1861, stating specifically, how and in what form the same was evidenced, by what

same was evidenced, by what authority of law and for what purposes the same was created, and the dates and nature of the bonds or other evidences of said indebtedness.

II.

(a) The amount of state expenditures made by the Commonwealth of Virginia prior to the first day of January, 1861, within the territory now included within the State of West Virginia since any part of said indebtedness was contracted, as provided by the ordinance adopted by the Commonwealth of Virginia at Wheeling, August 20, 1861.

(b) The aggregate ordinary expenses of the state government of the Commonwealth of Virginia prior to January 1, 1861, and since any part of said indebtedness was contracted.

(c) All moneys paid into the treasury of the Commonwealth of Virginia from the counties included within the State of West Virginia during said period.

III.

Whether any agreements, contracts, or arrangements, other than those appearing from the exhibits filed with the bill herein, have been made by the Commonwealth of Virginia with her creditors since January 1, 1861, with reference to said public debt created prior to said date, or to the satisfaction or discharge of said indebtedness or any part thereof.

IV.

The amount of certificates relating to said indebtedness issued by the Commonwealth of Virginia under the acts of her General Assembly, approved March 30, 1871, March 28, 1879, February 14, 1882, and February 20, 1892; and what amount, if any, of said certificates have been deposited since January 4, 1906, with the commission appointed under the joint resolution of the General Assembly of the Commonwealth of Virginia approved March 6, 1894; and he will also ascertain and report what amount of said certificates so deposited since said date were issued under the act of March 30, 1871; what amount were issued under the act of March 28, 1879; what amount were issued under the act of February 14, 1882, and what amount were issued under the act of February 20, 1892.

V.

The master will ascertain and report to what extent said certificates issued by the Commonwealth of Virginia represented the principal of one-third of said public debt and to what extent they represented the interest thereon, and the rate at which the interest was reckoned; and he will also ascertain

authority of law and for what purposes the same was created, and the dates and nature of the bonds or other evidences of said indebtedness."

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and report whether there is included in said certificates, or in any of them, the interest, or any part of the interest, which had accrued on the portion of said public debt refunded by the Commonwealth of Virginia, and if so, what was the total amount of such interest and at what rate it was reckoned.

VI.

It is further ordered and decreed that the master shall ascertain and report what amount, if any, of the bonds or other evidences of debt issued by the Commonwealth of Virginia under the act of March 30, 1871, was subsequently surrendered by the holders thereof and exchanged for other bonds or evidences of debt issued under the acts of 1879, 1882, and 1892, and if such exchanges were made, the master will ascertain and report what rate of interest was agreed to be paid upon such new bonds or evidences of debt.

VII.

It is further ordered and decreed that the Commonwealth of Virginia and the State of West Virginia shall each produce before the master all such records, books, papers, and public documents as may be in their possession or under their control, and which may, in his judgment, be pertinent to the said inquiries and accounts or any of them.

And the master is authorized to make or cause to be made such examination as he may deem desirable of the books of account, vouchers, documents, and public records of either State relating to the inquiries he is herein directed to make, and to cause copies thereof or extracts therefrom to be made for use in making up his report.

All public records published by authority of the Commonwealth of Virginia prior to the seventeenth day of April, 1861, and all papers and documents and other matter constituting parts of the public files and records of Virginia prior to the date aforesaid which in the judgment of the master may be relevant and pertinent to any of said inquiries, or copies thereof, if duly authenticated, may be used in evidence and considered by the master, but all such evidence shall be subject to exceptions to its competency. The public acts and records of the two States since the admission of West Virginia into the Union shall be evidence, if pertinent and duly authenticated, but all such evidence tendered by either party shall be subject to proper legal exceptions to its competency.

The master is empowered to summon any persons whose testimony he or either party may deem to be material, and to cause their depositions to be taken before him, or by a notary public or other officer authorized to take the same, after reasonable notice to the adverse party.

The master is authorized and empowered to employ such stenographers and other clerical assistants as he may find it desirable to employ in order

"The amount of the public debt of the Commonwealth of Virginia as of the first day of January, 1861, stating specifically, how and in what form the same was evidenced, by what

same was evidenced, by what authority of law and for what purposes the same was created, and the dates and nature of the bonds or other evidences of said indebtedness.

II.

(*a*) The amount of state expenditures made by the Commonwealth of Virginia prior to the first day of January, 1861, within the territory now included within the State of West Virginia since any part of said indebtedness was contracted, as provided by the ordinance adopted by the Commonwealth of Virginia at Wheeling, August 20, 1861.

(*b*) The aggregate ordinary expenses of the state government of the Commonwealth of Virginia prior to January 1, 1861, and since any part of said indebtedness was contracted.

(*c*) All moneys paid into the treasury of the Commonwealth of Virginia from the counties included within the State of West Virginia during said period.

III.

Whether any agreements, contracts, or arrangements, other than those appearing from the exhibits filed with the bill herein, have been made by the Commonwealth of Virginia with her creditors since January 1, 1861, with reference to said public debt created prior to said date, or to the satisfaction or discharge of said indebtedness or any part thereof.

IV.

The amount of certificates relating to said indebtedness issued by the Commonwealth of Virginia under the acts of her General Assembly, approved March 30, 1871, March 28, 1879, February 14, 1882, and February 20, 1892; and what amount, if any, of said certificates have been deposited since January 4, 1906, with the commission appointed under the joint resolution of the General Assembly of the Commonwealth of Virginia approved March 6, 1894; and he will also ascertain and report what amount of said certificates so deposited since said date were issued under the act of March 30, 1871; what amount were issued under the act of March 28, 1879; what amount were issued under the act of February 14, 1882, and what amount were issued under the act of February 20, 1892.

V.

The master will ascertain and report to what extent said certificates issued by the Commonwealth of Virginia represented the principal of one-third of said public debt and to what extent they represented the interest thereon, and the rate at which the interest was reckoned; and he will also ascertain

authority of law and for what purposes the same was created, and the dates and nature of the bonds or other evidences of said indebtedness."

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and report whether there is included in said certificates, or in any of them, the interest, or any part of the interest, which had accrued on the portion of said public debt refunded by the Commonwealth of Virginia, and if so, what was the total amount of such interest and at what rate it was reckoned.

VI.

It is further ordered and decreed that the master shall ascertain and report what amount, if any, of the bonds or other evidences of debt issued by the Commonwealth of Virginia under the act of March 30, 1871, was subsequently surrendered by the holders thereof and exchanged for other bonds or evidences of debt issued under the acts of 1879, 1882, and 1892, and if such exchanges were made, the master will ascertain and report what rate of interest was agreed to be paid upon such new bonds or evidences of debt.

VII.

It is further ordered and decreed that the Commonwealth of Virginia and the State of West Virginia shall each produce before the master all such records, books, papers, and public documents as may be in their possession or under their control, and which may, in his judgment, be pertinent to the said inquiries and accounts or any of them.

And the master is authorized to make or cause to be made such examination as he may deem desirable of the books of account, vouchers, documents, and public records of either State relating to the inquiries he is herein directed to make, and to cause copies thereof or extracts therefrom to be made for use in making up his report.

All public records published by authority of the Commonwealth of Virginia prior to the seventeenth day of April, 1861, and all papers and documents and other matter constituting parts of the public files and records of Virginia prior to the date aforesaid which in the judgment of the master may be relevant and pertinent to any of said inquiries, or copies thereof, if duly authenticated, may be used in evidence and considered by the master, but all such evidence shall be subject to exceptions to its competency. The public acts and records of the two States since the admission of West Virginia into the Union shall be evidence, if pertinent and duly authenticated, but all such evidence tendered by either party shall be subject to proper legal exceptions to its competency.

The master is empowered to summon any persons whose testimony he or either party may deem to be material, and to cause their depositions to be taken before him, or by a notary public or other officer authorized to take the same, after reasonable notice to the adverse party.

The master is authorized and empowered to employ such stenographers and other clerical assistants as he may find it desirable to employ in order

The defendant's draft adopts this paragraph.

Par. II, plaintiff's draft, directs the master to take the following accounts:

"What amount and proportion of said indebtedness and of the interest accrued thereon, should in equity be apportioned to and be now paid by the State of West Virginia."

Par. II, defendant's draft, directs the master to take the following accounts:

(*a*) "The amount of state expenditures made by the Commonwealth of Virginia prior to the first day of January, 1861, within the territory now included within the State of West Virginia since any part of said indebtedness was contracted, as provided by the ordinance adopted by the Commonwealth of Virginia at Wheeling, August 20th, 1861.

(*b*) "The aggregate ordinary expenses of the state government of the Commonwealth of Virginia, prior to January 1st, 1861, and since any part of said indebtedness was contracted.

(*c*) "All moneys paid into the treasury of the Commonwealth of Virginia from the counties included within the State of West Virginia during said period."

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to the prompt and efficient execution of this order of reference, and to agree with such stenographers and typewriters and clerical assistants upon such compensation to be made to them as the master may consider reasonable and just. He is authorized to direct their compensation to be paid out of the funds to be deposited to the credit of this cause.

The complainant shall cause the sum of three thousand dollars to be deposited with the marshal of this court to the credit of this cause, and such further sums as from time to time may be required, on account of the costs and expenses of executing this decree; and the master is authorized from time to time to draw upon the fund so deposited by Virginia for the compensation of the stenographers, typewriters, and other clerical assistants whom he may employ, and for any other costs and expenses, including stationery and printing, which may in his judgment be necessary to be incurred in executing this order of reference.

The said marshal is allowed to have and retain a commission of 5 per centum for his services in receiving and disbursing the funds so deposited with him, and he will make a report of his transactions, receipts, and disbursements in the premises to the court.

Any notices to be given in connection with the execution of this decree may be given to the Attorneys General of the respective States.

Par. III, plaintiff's draft, directs that the master "will make and return with his report any special or alternative statements of the accounts between the complainant and the defendant in the premises which either may desire him to state or which he may deem to be desirable to present to the court."

Complainant objects to par. II, defendant's draft, on the ground that it seems to lend the sanction of the court in advance to a basis or scheme for the statement of the account, which is not shown by anything as yet in the cause to be either equitable or just.

Before any such question can be fairly adjudicated, it is necessary that the evidence in the case be taken and have the aid of its master in collating and thoroughly digesting it.

There is not enough in the record to enable the court to come to any just or definite conclusion as to the precise scheme which it would be equitable to adopt in stating the account. To do so at this stage of the litigation, would be to decide an important question in the case before the evidence is taken. The effect of par. II would be to have the court prejudge the case as to the basis on which the account shall be stated.

The case is now only submitted for a decree referring it to a master, to state and report to the court the data necessary to enable the court to justly decide it upon its merits.

If it should then appear that the basis prescribed by the Wheeling ordinance is binding upon the parties, and must be followed as the basis upon which the account shall be made up, that basis would be adopted. But if it should be then manifest that that arbitrary basis of settlement is not the one on which the account should be stated, because it would, if applied to the facts of the case as they shall appear in the evidence, lead to absolutely unconscionable results and operate to impair the obligation of the contracts by which the common debt was created, contracts which were and are alike obligatory upon Virginia and upon West Virginia, or for any other valid reason, then the scheme of settlement indicated in the

Wheeling ordinance would have to be discarded, and an equitable basis and scheme of settlement adopted.

Complainant contends that, while the Wheeling ordinance upon its face, prescribes an absolutely arbitrary basis of settlement, the representatives of Virginia are satisfied that upon a fair, reasonable and just construction of the language of that ordinance, and of the subsequent supplemental enactments, the scheme of settlement therein defined will, when applied to the facts as stated in the bill, and as it is believed they can be established by proofs, result in fixing the proportion of the debt of Virginia which West Virginia should assume and pay, inclusive of interest, at a very large sum, though not so large a sum as it would be equitable for West Virginia to pay.

The debt, a portion of which she was to pay, was an interest-bearing debt. It would be manifestly "just" and "equitable" that West Virginia should be required to pay interest as well as principal. Indeed, any settlement which does not require that State to pay interest during the long period of her default and refusal to pay anything, would be not only unjust, and inequitable, but iniquitous.

West Virginia came into the Union upon the distinct condition expressed in her constitution, that she would assume an equitable proportion of the common debt of the undivided State, as it existed prior to January 1, 1861, and would provide for the payment of the accruing interest and the redemption of the principal thereof.

While it is believed that, upon the facts stated in the bill and accompanying exhibits, and upon the proofs hereafter to be adduced in support thereof, West Virginia will owe a very large sum, even under the arbitrary scheme of the Wheeling ordinance, we submit that we should not, in the present status of the litigation, be tied down to the terms of that ordinance.

Another palpable objection to the defendant's draft is, that it excludes from the account the value of the property, assets, and money which West Virginia has received from the Com-

monwealth. Upon any basis of just accounting, these items should be brought into the account.

If the account should be stated on the basis of the Wheeling ordinance, these items would manifestly be proper charges against West Virginia. By the terms of that ordinance, Virginia's title to, and ownership of, all of the property and assets theretofore belonging to the Commonwealth remain intact.

By it, West Virginia would acquire no title to any of those assets or of that property. Framed as that ordinance was, by Western Virginians, and arbitrary, and on its face unjust, as were the criteria by which it undertook to provide that West Virginia's proportion of the common debt should be computed, its authors were not so conscienceless as to also propose that the new State, after making such an inadequate contribution to its share of a debt which had been chiefly contracted by the votes of the representatives of its people and for their benefit, should also have a share of the property and assets of the Commonwealth, free of charge.

All that was, by the terms of that ordinance, to be ceded by the Commonwealth to the new State, was political dominion, and jurisdiction over the people and territory embraced in the new State.

The meaning and effect of the ordinance was to leave the title to, and ownership of, the assets and property of the Commonwealth in the Commonwealth.

Another objection to the account called for by defendant's draft, is that it does not direct any account to be taken ascertaining the amount and proportion of the debt of Virginia on and prior to January 1, 1861, which West Virginia should assume and pay, but contents itself with merely directing the arbitrary and inconsequential accounts defined in par. II, defendant's draft.

Complainant's principal insistance is that defendant's draft of a decree prejudges the case in advance of a hearing upon the merits, while that tendered for the plaintiff cannot operate to the prejudice of either party, upon any material question in

the cause; by this draft the adjudication of these questions being left to await a hearing after the master's report shall be filed, upon the evidence then fully in the cause.

The precise accounts called for by par. II, defendant's draft, will be taken by the master if he shall find it necessary and proper to take them in order to ascertain the amount and proportion of the Virginia debt which West Virginia should pay; and if the master shall for any reason deem it unnecessary to take those accounts, the defendant can, under par. III, complainant's draft, have them stated as special accounts, if she shall be so advised.

Par. III of complainant's draft is designed to enable each party, or the master, to have alternative, or special statements of the accounts made up on any basis on which either party or the master may deem it proper or desirable that the same shall be stated.

By having the respective views and contentions of the complainant and the defendant thus presented in contrast in such concrete form, the court, with the assistance of the findings of the master, will be enabled more readily and intelligently to reach a just conclusion.

If the inquiries defined in pars. III, IV, V and VI, defendant's draft, have any pertinency to any question in the case, it must be because of something not yet in the record.

Complainant objects to them as being unnecessary and irrelevant.

There is nothing in the cause, or so far as we know out of it, to show that there is any foundation in fact for the inquiry mentioned in par. III, defendant's draft, as to whether Virginia has made any other contracts or arrangements with the public creditors, since January 1, 1861, in reference to the public debt. That inquiry, though harmless, is useless.

The accounts provided for in pars. IV and V, defendant's draft, are not pertinent to any issue in the cause.

Both relate to the certificates or receipts given by Virginia to the holders of the bonds issued by the Commonwealth be-

fore her dismemberment, who have deposited these bonds with her.

Those certificates are in the nature of a declaration of trust by Virginia, that she holds said bonds (so far as they have not been funded in the new securities which the Commonwealth has given for about two-thirds of the aggregate amount thereof, principal and interest), for the benefit of the owners of the bonds deposited with her.

Those transactions cannot in any way affect any question in the cause.

The only function of those certificates is to show who are now entitled to the bonds which were so deposited with Virginia, and which she holds in her treasury for the benefit of these certificate holders, awaiting a settlement with West Virginia. These inquiries are unnecessary and useless.

The same objection applies to par. VI, defendant's draft. That relates to the obligations which were issued by Virginia, as now constituted, in settlement of the two-thirds of the old bonds funded, and payment of which was assumed by her.

That is a matter with which West Virginia has nothing to do, and which does not affect the rights or obligations of either party in respect to the claims asserted in complainant's bill.

Those new bonds given by Virginia for the two-thirds of the old bonds assumed by her, and accepted by the owners of the old bonds so deposited with Virginia, operated as a payment and discharge of the old bonds to the extent of the two-thirds thereof so funded.

West Virginia is not sued here to pay any part of that two-thirds so settled by Virginia. She is sued to have her assume and pay so much of the remaining unfunded third of the common debt of the undivided State, as may be West Virginia's equitable portion of the whole of the debt represented by the bonds of the original State. It has never been claimed or suggested that there was any liability on West Virginia beyond said unfunded third of the bonds of the original State which have been funded; or that West Virginia should pay more tha..

one-third of the bonds issued by Virginia prior to the formation of West Virginia, which have not been funded.

The liability of West Virginia on account of the common public debt, has sometimes been estimated by Virginia or her representatives at one-third thereof, but never at more than one-third, and Virginia has undertaken to take care of the other two-thirds with which West Virginia has nothing to do.

It is true, that there are some millions of the debt of the undivided State, which Virginia has paid in full, and holds the obligations so taken up by her as a claim against the new State, to the extent of West Virginia's equitable liability for contribution therefor; and the extent of that liability can be ascertained and stated in the account directed by par. II, complainant's draft.

There is no occasion for any of the accounts directed by pars. III, IV, V and VI, defendant's draft. If West Virginia wants any of them to be stated, she can have that done as a special statement under par. III of complainant's draft.

Mr. John G. Carlisle and *Mr. John C. Spooner*, with whom *Mr. C. W. May*, Attorney General of the State of West Virginia, *Mr. Charles E. Hogg*, *Mr. W. Mollohan*, *Mr. George W. McClintic* and *Mr. W. G. Matthews* were on the brief, for defendant:

The difference between the two proposed decrees is radical, and presents to the court a question which in our view is fundamental and which West Virginia contends, respectfully and very earnestly, should be decided before any reference to a master to state the account between the parties.

The jurisdiction of the court over this case is settled by the decision overruling the demurrer. We are quite aware that the court has recognized a distinction between suits by private parties in respect of the application of the rules of pleading and of practice, and suits between States. *Rhode Island* v. *Massachusetts*, 13 Peters, 23; *Rhode Island* v. *Massachusetts*, 14 Peters, 256.

West Virginia does not and could not successfully here contest the principles thus laid down, but the principles of equity and the rules of chancery procedure so far as essential to protect the rights of parties litigating in this tribunal will, of course, be substantially enforced. The application of some of the rules of procedure are certainly essential to substantial justice. 2 Bates, Fed. Eq. Pro. 802, § 753.

Thus it stands alleged in the bill and admitted by the answer, and if it were not admitted by the answer, it is conclusively established by the bill and its exhibits, that there was a solemn agreement entered into in 1861 between the State of Virginia and the new State of West Virginia, with the consent of the Congress, by which the latter State assumed (as one of the conditions of the assent of Virginia to her becoming a State) a just proportion of the indebtedness of that Commonwealth as it existed prior to January 1, 1861, the manner of ascertaining which proportion was defined by the ordinance itself.

The ordinance was, as treated by this court in the case of *Virginia* v. *West Virginia*, 11 Wallace, 39, a proposition by the Commonwealth of Virginia to the people of the proposed new State. It was accepted by the constitutional convention of the proposed new State, carried into its constitution and adopted by the people; and when the State was admitted into the Union by the Congress, with the assent of Virginia, it became a completed compact between competent parties, upon adequate consideration, protected by the Constitution of the United States from impairment by either party.

The ordinance defines what would be a just proportion; for it provides not only for the assumption of a just proportion, but specifically in what manner that proportion shall be ascertained.

The obligation of a lawful compact between two States, justiciable in its nature, certainly is as binding in law upon both until abrogated by both in a constitutional way, as a contract between a State and an individual, or between two individuals, and a disregard or violation of it by one, certainly cannot thereby release it from its obligation.

From the averments of the bill and the admissions in the answer, and the argument at the bar, it cannot be an open question in this case that the only liability of West Virginia for an equitable proportion of the *ante-bellum* debt of Virginia is upon the basis of the ordinance.

The general rule stated in *Hartman* v. *Greenhow*, 102 U. S. 672, to the effect that where a State is divided into two or more States, in the adjustment of liabilities between each other, the debts of the parent State should be ratably apportioned among them, is essentially qualified by the authorities there quoted, in this, that a special agreement between the two States in respect of the assumption of a proportion of the debt as it existed before the separation, takes the case out of the general rule; so that the second ground alleged in the bill which specifically avers a special agreement, destroys the applicability of the rule to this case. This special agreement cannot be dismissed from this case as the decree proposed on behalf of Virginia would do. This court has sustained the validity of this ordinance in *Virginia* v. *West Virginia*. 11 Wallace, 39, in respect of the provision contained in it for the incorporation of the counties of Berkeley and Jefferson in the latter State conditioned upon a popular vote therefor.

If the ordinance was valid then in respect of the incorporation of these counties, it cannot be held to be invalid as to the specific provision contained in § 9 for the assumption by the new State of a just proportion of the indebtedness to be ascertained in the manner defined, clearly carried into the constitution of the new State and assented to by Congress by the admission of West Virginia into the Union.

Whether it was or was not the lawful government of Virginia was a political question. When the House of Representatives admitted the members of Congress from that State and the Senate admitted the senators elected by the legislature of the "Restored State," and the President recognized that government as the true government of Virginia, that forever settled

its legality and regularity beyond the power of judicial review and made valid its acts *ab initio*. But for that "Restored State of Virginia," and its recognition by the political departments of the Federal Government, there would have been no government of Virginia under the Constitution of the United States from April, 1861, to the close of the war. The ordinance of the Wheeling convention of 1861, which was the genesis of the State of West Virginia, and the adoption of its constitution, are, from the standpoint of law, as clearly acts of the Commonwealth of Virginia as if they had taken place in 1851 instead of in 1861.

An agreement between States, such as this special agreement in respect to the proportion of the debt of Virginia which was to be assumed by the State of West Virginia, when consented to by Congress, binds the citizens of both States, and is irrevocable by either party. Where the legislation of either has attempted to impair the obligation of a compact, it has been held void under the Constitution of the United States. *Greene* v. *Biddle*, 8 Wheat. 1; *Rhode Island* v. *Massachusetts*, 12 Peters, 748, and cases cited.

The Wheeling ordinance was carried into the constitution of West Virginia as follows:

"ARTICLE VIII. Section 8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, shall be assumed by this State, and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and to redeem the principal within thirty-four years."

The convention assembled within ninety days after the adoption of the ordinance. Its sole warrant for assembling was the ordinance. Its authority to frame the constitution was derived from the ordinance. The ordinance as a whole was a proposition to that convention and, as a whole, was accepted by the convention. The convention complied with all the provisions of the ordinance. The constitution was framed to

meet all the requirements of the ordinance. It was the basis of the constitution.

The inconsistent attempt to eliminate the ordinance from the case—the present posture of counsel for Virginia—is in order that the ordinance may be eliminated, and § 8 of the first constitution is to be construed as the assumption by the new State of an equitable proportion of the public indebtedness of Virginia prior to January 1, 1861, upon the basis of population and territory. Such cannot be the law of this case. The assembling of the convention was an acceptance of § 9 of the ordinance. The ordinance embodied the conditions, and § 9 by no means the least important of them, of Virginia's consent to the erection of the new State out of her territory.

The suggestion that § 8 of Article 8 of the constitution had no reference to § 9 of the ordinance, assumes that the new State was taking upon herself an equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, without definition or understanding as to the basis upon which it was to be ascertained, therefore leaving open the vital question as to what would constitute an equitable proportion, for future adjustment between the two States. This is not to be believed.

The debt of Virginia on January 1, 1861, was doubtless well known throughout the State of Virginia. It is alleged in the bill that about $33,000,000 of it were incurred in connection with the construction of works of internal improvement. If it had been the purpose of Virginia, in requiring as a condition of her assent, the assumption by the proposed new State of an equitable proportion of the public debt without specification as to the manner in which, and the basis upon which that proportion should be ascertained, it is inconceivable that the language of § 9 of the ordinance would have been what it was, and that the language of § 8 of Article 8 of the constitution would have been what it was. It was entirely for Virginia to dictate the terms, and if it had been her purpose to require an assumption of the debt upon the basis of territory and popu-

lation, West Virginia would have been required to assume "one-third of the debt as it existed prior to the first day of January, 1861," or "an equitable proportion to be ascertained upon the basis of territory and population."

If the ordinance be valid and binding, it cannot be disregarded by the court. While West Virginia could not by any suit prevent Virginia from disregarding it in the adjustment with her creditors of her debt or any portion of it, when Virginia invokes the original jurisdiction of this court in a suit against West Virginia to compel her to account for an equitable proportion of her debt prior to January 1, 1861, upon the basis of the ordinance and upon other and different bases, she may plead the ordinance as the only basis upon which the court can decree an accounting by her. The court will not make a new contract for the parties. They were competent to make one for themselves, and they did make one for themselves. It is unfortunate that the two States were unable many years ago to adjust the matter in accordance with the agreement which they had entered into and which subsists between them.

West Virginia is entitled to have the question whether or not the special agreement as to what shall constitute a just proportion of the debt solemnly entered into between the two States is binding, determined at this juncture by the court and, if it be held to be a binding agreement, Virginia is entitled to no accounting with West Virginia in this suit for her equitable proportion of the debt of the Commonwealth prior to January 1, 1861, except under the terms of that ordinance, carried into the constitution.

Complainant's draft directs that the master—"III. Make and return with his report any special or alternative statements of the account between the plaintiff and the defendant in the premises which either may desire him to state or which he may deem to be desirable to present to the court." This asks the court to leave the determination of the pivotal point in the case, which defendant contends should be decided by it in advance of an accounting, to a master, albeit only in

an advisory way, and it gives West Virginia permission to have an accounting made, if she desires it, on the basis of the ordinance at her own expense. She is defendant here. In that event we would have two lines of investigation proceeding before the master at the same time, each entirely distinct in basic principle from the other, each burdensome in labor, expense and the consumption of time. Neither would throw any light upon the other. An exhaustive accounting under the ordinance would not aid the court in determining whether it is binding and the only legal basis of settlement or not. An exhaustive investigation upon the international law basis would no more aid the court in determining whether the ordinance is binding and therefore the sole ground upon which the liability of West Virginia to an accounting at all can be based. If the compact is in force, any accounting save under that will be not only burdensome, but superfluous.

Defendant's draft is in literal execution of the contract of the parties, as evidenced by the ordinance and § 8 of the first constitution.

It directs the master to ascertain and report:

(*a*) The amount of state expenditures made by the Commonwealth of Virginia prior to the first day of January, 1861, within the territory now included within the State of West Virginia, since any part of said indebtedness was contracted, as provided by the ordinance adopted by the Commonwealth of August 20, 1861.

Defendant agrees that the last clause need not be inserted.

(*b*) To ascertain the aggregate ordinary expenses of the state government of the Commonwealth prior to January 1, 1861, and since any part of said indebtedness was contracted.

(*c*) All moneys paid into the treasury of the Commonwealth of Virginia from the counties included within the State of West Virginia during the said period.

The items (*a*) and (*b*) are, under the ordinance, to be charged to West Virginia.

The item (*c*) is under the ordinance to be credited to the

State of West Virginia, and when these three steps shall have been taken, and the two items charged, and the one item credited, the sum which it was agreed between the two States should constitute a just proportion of the debt of the Commonwealth of Virginia prior to January 1, 1861, which West Virginia assumed, will have been ascertained. These provisions are not "arbitrary and inconsequential items."

They are the items which Virginia herself framed and required to be accepted by the proposed new State as a condition of assent to her separation and admission into the Union.

There is but one item in § 9—defining the manner in which the account should be taken in order to ascertain the proportion of the debt to be taken upon herself by the proposed new State—left at all indefinite, and that is item (*b*), "'a just proportion' of the ordinary expenses of the state government, since any part of said debt was contracted." This involves a determination of the basis upon which a "just proportion" of the aggregate ordinary expenses of the state government during the said period is to be ascertained. Shall it be population or territory, or both, or taxable values? Defendant contends that it should be based upon population, since "government"—including the administration of justice, the making and administering of the laws, the education of the children through a system of common schools, academies and a state university, the maintenance of state institutions, the support of prisoners, the care of the insane and paupers, and the like—for people, not acres. Defendant suggests there should be added to defendant's draft, in respect of an ascertainment of the aggregate ordinary expenses of the State, a direction to the master to find alternatively certain facts substantially as follows: "For the purpose of enabling the court to determine the just proportion of the aggregate of the ordinary expenses of the state government of the Commonwealth of Virginia prior to January 1, 1861, and since any part of said indebtedness was contracted, said master shall ascertain and report the population during the said period of the counties now con-

stituting the Commonwealth of Virginia, and separately the population of the counties now constituting the State of West Virginia, as shown by the decennial censuses taken during the said period by the United States, and also the average population of Virginia during each of said periods of ten years."

The aggregate ordinary expenses being found, and the items suggested as to population, it will be easy to determine the "just proportion" if that is the proper basis.

This case should not be cast at large, with no definition of the principles to govern his action, into the hands of a master; that at least it should be settled before a reference for the purpose of taking an account, whether the liability of West Virginia to Virginia is upon the special agreement which preceded and accompanied her admission into the Union, or, because of the absence of a special agreement, upon the basis of population and territory.

It will be observed that in par. II, complainant's draft, the master is not only directed to ascertain the amount and proportion of said indebtedness, but "of the interest accrued thereon."

Defendant objects to this paragraph because there is no legal ground for directing the ascertainment of interest. West Virginia has not obligated herself in any manner for the payment of interest. A State is not liable to pay interest unless it has expressly contracted to do so. See *United States* v. *North Carolina*, 136 U. S. 211.

See also, following this principle, *Sawyer* v. *Colgan*, 102 California, 293; *Hawkins* v. *Mitchell*, 34 Florida, 421, 422; *Molineux* v. *State*, 109 California, 380; *Flint &c. R. R.* v. *Board of Auditors*, 102 Michigan, 502; *Carr* v. *State*, 127 Indiana, 204.

See also note, 22 American State Reports, 448.

By leave of court, *Mr. Holmes Conrad* made an argument herein as *amicus curiæ*.

On May 4, 1908, THE CHIEF JUSTICE announced the following decree:

This cause having been heard upon the pleadings and accom-

panying exhibits, it is, on consideration, ordered that it be referred to a special master, to be hereinafter designated,[1] to ascertain and report to the court:

1. The amount of the public debt of the Commonwealth of Virginia on the first day of January, 1861, stating specifically how and in what form the same was evidenced, by what authority of law and for what purposes the same was created, and the dates and nature of the bonds or other evidence of said indebtedness.

2. The extent and value[2] of the territory of Virginia and of West Virginia June 20, 1863, and the population thereof, with and without slaves, separately.

3. All expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted.

4. Such proportion of the ordinary expenses of the government of Virginia since any of said debt was contracted, as was properly assignable to the counties which were created into the State of West Virginia on the basis of the average total population of Virginia, with and without slaves, as shown by the census of the United States.

5. And also on the basis of the fair estimated valuation of the property, real and personal, by counties, of the State of Virginia.

6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West Virginia during the period prior to the admission of the latter State into the Union.

7. The amount and value of all money, property, stocks and credits which West Virginia received from the Commonwealth of Virginia, not embraced in any of the preceding items and

[1] On June 1, THE CHIEF JUSTICE announced the appointment of Mr. Charles E. Littlefield, a member of the bar of this court as special master.

[2] A motion having been made to modify the decree this paragraph was amended by the court of June 1 so as to read "The extent and assessed valuation &c." and in all other respects the motion was overruled.

not including any property, stocks or credits which were obtained or acquired by the Commonwealth after the date of the organization of the restored government of Virginia, together with the nature and description thereof.

The answers to these inquiries to be without prejudice to any question in the cause.

It is further ordered that the Commonwealth of Virginia and the State of West Virginia shall each, when required, produce before the master, upon oath, all such records, books, papers and public documents as may be in their possession or under their control, and which may, in his judgment, be pertinent to the said inquiries and accounts, or any of them.

And the master is authorized to make, or cause to be made, such examination as he may deem desirable of the books of account, vouchers, documents and public records of either State relating to the inquiries he is herein directed to make, and to cause copies thereof or extracts therefrom to be made for use in making up his report.

All public records published by authority of the Commonwealth of Virginia prior to the seventeenth day of April, 1861, and all papers and documents and other matter constituting parts of the public files and records of Virginia prior to the date aforesaid, which in the judgment of the master may be relevant and pertinent to any of said inquiries, or copies thereof, if duly authenticated, may be used in evidence and considered by the master, but all such evidence shall be subject to exceptions to its competency. The public acts and records of the two States since the admission of West Virginia into the Union shall be evidence, if pertinent and duly authenticated, but all such evidence tendered by either party shall be subject to proper legal exceptions to its competency.

The master is empowered to summon any persons whose testimony he or either party may deem to be material, and to cause their depositions to be taken before him, or by a notary public or other officer authorized to take the same, after reasonable notice to the adverse party.

The master is authorized and empowered, subject to the approval of the Chief Justice, to employ such stenographers and other clerical assistants as he may find it desirable to employ in order to the prompt and efficient execution of this order of reference, and to agree with such stenographers and typewriters and clerical assistants upon such compensation to be made to them as the master may consider reasonable and just. He is authorized to direct their compensation to be paid out of the funds to be deposited to the credit of this cause.

The complainant shall cause the sum of five thousand dollars to be deposited with the marshal of this court to the credit of this cause, and such further sums as from time to time may be required, on account of the costs and expenses of executing this decree; and the master is authorized from time to time to draw upon the fund so deposited by Virginia for the compensation of the stenographers, typewriters and other clerical assistants whom he may employ, and for any other costs and expenses, including stationery and printing, which may in his judgment be necessary to be incurred in executing this order of reference.

The said marshal shall receive such commission for his services in receiving and disbursing the funds so deposited with him as may be allowed by the court, and he will make a report of his transactions, receipts and disbursements in the premises.

Any notices to be given in connection with the execution of this decree may be given by and to the Attorneys General of the respective States.

The master will make his report with all convenient speed and transmit therewith the evidence on which he proceeds, and is to be at liberty to state any special circumstances he considers of importance, and to state such alternative accounts as may be desired by either of the parties, subject to the direction of the court.

And the court reserves the consideration of the allowance of interest; of the costs of this suit, and all further directions until after the master has made his report; either of the parties to be at liberty to apply to the court as they shall be advised.